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No. 80-931

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1980.

CHARLES D. BONANNO LINEN SERVICE, INC.,
PETITIONER,

v.

NATIONAL LABOR RELATIONS BOARD
AND
TEAMSTERS LOCAL UNION NO. 25, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,
RESPONDENTS.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT.

Joint Appendix.

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PETITION FOR WRIT OF CERTIORARI FILED DECEMBER 10, 1980.
CERTIORARI GRANTED, MARCH 9, 1981.
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PROCEEDINGS BEFORE THE
NATIONAL LABOR RELATIONS BOARD

In the Matter of: Charles D. Bonanno Linen Service, Inc.
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4.9.76	Charge filed
5.4.76	Amended Charge filed
5.20.76	Complaint and Notice of hearing, dated
6.2.76	Respondent's Answer, received
8.27.76	Stipulation signed by Respondent, Charging Party and General Counsel, dated
8.30.76	Hearing opened
8.30.76	Hearing closed
12.20.76	Administrative Law Judge's Decision issued
1.24.77	Charging Party's Exceptions to the Administrative Law Judge's Decision, recevied
1.24.77	Respondent's letter requesting Oral Argument, dated
1.26.77	Respondent's Exceptions to the Administrative Law Judge's Decision, received
1.31.77	Charging Party's Memorandum in Opposition to Respondent's Exceptions, dated

5.12.77 Decision and Order of the National Labor Relations Board, dated

8.6.79 Supplemental Decision and Order of the National Labor Relations Board, dated

PROCEEDINGS BEFORE THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT
NLRB v. BONANNO LINEN SERVICE, INC.
630 F2d 25 (1st Cir. 1980)

10.16.79 Application for Enforcement filed by National Labor Relations Board with the United States Court of Appeals for the First Circuit

10.18.79 Answer of Charles D. Bonanno Linen Service, Inc. to Application for Enforcement filed with the United States Court of Appeals for the First Circuit

11.7.79 Leave granted by Court of Appeals to Teamsters Union No. 25 a/w International Brotherhood of America to intervene in the Enforcement proceedings

5.6.80 Oral Argument

9.12.80 Decision of U.S. Court of Appeals the First Circuit issued decree entered enforcing the Order of the National Labor Relations Board

10.2.80 Motion to stay enforcement of the Court's Decision and Decree filed by Charles D. Bonanno Linen Service, Inc.

10.6.80 Order of court staying the operation of its decree entered September 12, 1980 pending a final decision of the Supreme Court of the United States upon a Petition for Writ of Certiorari filed by Bonanno

PROCEEDINGS BEFORE THE
SUPREME COURT OF THE UNITED STATES
CHARLES D. BONANNO LINEN SERVICE V.
NATIONAL LABOR RELATIONS BOARD CASE NO. 80-931

12.10.80 Petition for Certiorari filed

3.9.81 Certiorari granted

Notation to Decisions Below

The following opinions, decisions, judgment, and orders have been omitted in printing this appendix because they appear on the following pages in the appendix to the Petition For Writ of Certiorari.

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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

CHARLES D. BONANNO LINEN SERVICE, INC.	
— and —	DOCKET NO. 1-CA-11,628
TEAMSTERS LOCAL UNION NO. 25, a/w INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA.	

Exceptions to the Decision of the Administrative Law Judge on Behalf of Teamsters Local Union No. 25

Now comes Teamsters Local Union No. 25, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Charging Party herein, and excepts to the Decision of the Administrative Law Judge (hereafter "ALJ") in the following respects:

1. The Charging Party excepts to the ALJ's failure to conclude (ALJ Decision, pg. 4, lines 8-15) that Bonanno's withdrawal from the multi-employer negotiations was prompted by its disagreement with other members of the multi-employer association over whether the association should change its bargaining strategy by proposing a new and significantly higher wage offer to the Union. As grounds for this exception, the Charging Party states that the testimony at T. 44-45, 66-70, and 82-86 and inferences reasonably drawn therefrom demonstrate that the multi-employer negotiating team was seriously considering a new and sig-

nificantly better wage offer to the Union immediately prior to Bonanno's withdrawal and further demonstrate that Bonanno's withdrawal was prompted by its disagreement with other association members over making such an improved wage offer.

2. The Charging Party excepts to the ALJ's failure to conclude (ALJ Decision, pg. 4, lines 8-15) that Bonanno's decision to withdraw from the multi-employer negotiations rather than support or participate in an improved wage offer by the multi-employer association, as a matter of law, precluded a finding that unusual circumstances existed to justify its withdrawal irrespective of whether or not an impass in negotiations would normally permit a withdrawal by an employer member of a multi-employer unit. As grounds for this exception, the Charging Party states that Bonanno's conduct as herein described impeded and interfered significantly with fair and good faith collective bargaining between the multi-employer association and the Union and thus, should not be viewed as a legitimate reason to support the withdrawal, but rather should be viewed as sufficient cause, in and of itself, to support a finding that Bonanno violated Sections 8(a)(1) and (5) of the Act.

In all other respects, the Charging Party concurs with and adopts the ALJ's Decision.

Respectfully submitted,

For the Charging Party, Teamsters Local Union No. 25, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America,

By their Attorney,

Alan J. McDonald
Grady and McDonald
75 Federal Street, Suite 511
Boston, MA 02110
Tel. (617) 426-9450

DATED: 1/19/77

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

CHARLES D. BONANNO LINEN SERVICE, INC.	*	
and	*	CASE NO. 1-CA-11,628
TEAMSTERS LOCAL UNION NO. 25, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA	*	

Respondent's Exceptions to Decision of Administrative Law Judge

Charles D. Bonanno Linen Service Inc., Respondent herein, by its undersigned Attorneys, hereby excepts to the following Findings of Fact and Conclusions of Law contained in the Decision of Administrative Law Judge James M. Fitzpatrick dated December 20, 1976:

1. Finding contained on Page 3, lines 38-40 that, "The fact that the Union struck only Bonanno is not a circumstance which justified Bonanno's later withdrawal from the Group".

2. Finding on Page 4, lines 21-24 that, ". . . the Group was not thereby fractured in a manner warranting withdrawal by others in the Group".

3. Failure to find on Page 4 at line 36 that the Union did not at any time between November 21, 1975 and April 29, 1976, make a demand orally or in writing on the Respondent

that it meet for the purpose of collective bargaining either individually or as a member of the Group or that it continue to be represented by the Group for the purpose of collective bargaining.

4. Finding on Page 4, lines 41-43 that, "... the difference in personnel was not such a circumstance as would justify withdrawal from the Group".

5. Finding on Page 4, lines 45-46 that, "Use of such normal measures are not 'unusual circumstances' which justify withdrawal from group bargaining".

6. Finding on Page 5, lines 19-20 that, "... the circumstance of an ongoing impasse (are) an insufficient reason for Bonanno to have withdrawn from the Group".

7. Finding on Page 5, lines 21-23 that, "... unless the Union went along with the withdrawal ..... Bonanno had a continuing duty to participate in group bargaining, a duty which it violated by withdrawing".

8. Finding on Page 7, lines 10-11 that the filing of Unfair Labor Practice Charges on April 9, 1976, stands as a "constant union assertion" that Bonanno was bound to group bargaining.

9. Finding on Page 7, lines 18-20 that, "... the Union did not, directly or by implication, consent to, nor acquiesce in, Bonanno's withdrawal from Group bargaining".

10. Finding on Page 7, lines 35-43 that, "Bonanno was obliged to bargain with the Group, that its attempt to withdraw while negotiations were in progress was not timely nor justified by the circumstances, including the ongoing impasse and the selective strike, and since the withdrawal the Union has neither consented to nor acquiesced in the withdrawal nor should it be estopped now from claiming that Bonanno is bound to the agreement reached with the Group. Bonanno's refusal to honor that agreement is, and has been, a breach of

its duty to bargain in good faith and is an unfair labor practice within the meaning of Section 8(a)(5) and (1) of the Act".

11. Finding on Page 8, lines 4-9 that, "The activities of Bonanno set forth in section II, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several states and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce".

12. Conclusion of Law No. 3 that, "The Union is, and has been at all material times, the exclusive bargaining representative of the employees of Bonanno in the following appropriate unit:

> All linen supply truck drivers and helpers employed by members of the New England Linen Supply Association, exclusive of all other employees, office clerical employees, guards and all supervisors as defined in Section 2(11) of the Act."

13. Conclusion of Law No. 4 that, "By its refusal to adopt the agreement reached between the Union and the Group bargaining on behalf of members of the New England Linen Supply Association, and by its refusal to give effect to the terms and conditions contained therein, Bonanno engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act".

14. Conclusion of Law No. 5 that, "The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act".

15. The proposed Remedy contained in the Paragraph commencing on Page 8, line 42 and ending on Page 9 at line 9.

16. The proposed Order commencing on Page 9 at line 15 and ending on Page 10 at line 25.

Dated: Boston, Massachusetts
January 21, 1977

CHARLES D. BONANNO LINEN SERVICE, INC.

By Sidney A. Coven
Lepie & Coven
Attorneys for Respondent
10 Tremont Street
Boston, Massachusetts 02108

OFFICIAL REPORT OF PROCEEDINGS

BEFORE THE

National Labor Relations Board

Docket No. 1-CA-11,628

IN THE MATTER OF:

CHARLES D. BONANNO LINEN SERVICE, INC.

— and —

TEAMSTERS LOCAL UNION NO. 25, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

PLACE: Boston, Massachusetts

DATE: August 30, 1976

PAGES: 1 - 104

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[1]

BEFORE THE NATIONAL LABOR RELATIONS BOARD

REGION ONE

In the Matter of:	:	
CHARLES D. BONANNO LINEN SERVICE, INC.	:	
— and —	:	Case No. 1-CA-11,628
TEAMSTERS LOCAL UNION NO. 25, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA.	:	

Hearing Room 1
12th floor
Keystone Building
99 High Street
Boston, Massachusetts
Monday, August 30, 1976

The above entitled matter came on for hearing, pursuant to Notice, at 11 o'clock a.m.

BEFORE:

Honorable, JAMES M. FITZPATRICK, Administrative Law Judge

APPEARANCES:

FRANCIS X. MCDONOUGH, Esq., Region One, National Labor Relations Board, Keystone Building, 99 High Street, Boston, Massachusetts; appearing as Counsel for the General Counsel.

ALAN J. MCDONALD, Esq., Law firm of Grady & McDonald, 75 Federal Street, Boston, Massachusetts 02110; appearing on behalf of the Charging Party.

[2]

APPEARANCES (Continued):

SIDNEY A. COVEN, Esq., Law firm of Lepie & Coven, 10 Tremont Street, Boston, Massachusetts 02108; appearing on behalf of the Respondent.

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Proceedings

11:10a.m.

JUDGE FITZPATRICK: The hearing will be in order.

This is a formal hearing before the National Labor Relations Board in the matter of Charles D. Bonanno Linen Service, Inc., and Teamsters Local Union No. 25, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Case No. 1-CA-11,628.

The Administrative Law Judge conducting the hearing is James M. Fitzpatrick.

All parties have been advised of procedures in Board hearings by service of a statement of procedures along with the Notice of Hearing and Complaint.

Will counsel now please state their appearances for the record, and begin with the General Counsel.

MR. MCDONOUGH: Francis X. McDonough, Counsel for the General Counsel, 99 High Street, Boston, Mass., 02110.

JUDGE FITZPATRICK: For the Charging Party?

MR. MCDONALD: Alan J. McDonald of Grady & McDonald, 75 Federal Street, Boston.

JUDGE FITZPATRICK: For the Respondent?

MR. COVEN: Sidney A. Coven from Lepie & Coven, 10 Tremont Street, Boston, Mass. 02108.

JUDGE FITZPATRICK: Thank you, gentlemen.

Before the hearing, I asked the counsel if there

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was any way of disposing of the matter other than by trial, and I was told it had been discussed and settlement could not be reached at this time. You all understand that those of us who hear these cases and decide them have a selfish interest

so that if they can be disposed of in another way; so that if at any time a ray of light appears, even though it is a faint one, that any of you think might be a basis for a resolution of this matter without litigation; I would be pleased to hear about it and give you a reasonable time to explore it.

MR. McDonough, will you offer the formal papers?

MR. MCDONOUGH: Yes, Your Honor.

General Counsel's 1(a) through 1(h) are the formal papers in this proceeding. The parties have both been shown the documents and I would offer them in evidence now.

(The documents above referred to were marked General Counsel's Exhibit No. 1(a) - 1(h) for identification.)

JUDGE FITZPATRICK: Any objections?

MR. COVEN: No objections.

MR. MCDONALD: No objections.

JUDGE FITZPATRICK: General Counsel's 1(a) through (h) are received in evidence.

(The documents above referred to, heretofore marked General Counsel's Exhibit No. 1(a) - 1(h) for identification, were received in evidence.)

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JUDGE FITZPATRICK: Mr. McDonough, I have read over the Complaint and Answer, and I don't want to anticipate what you or other counsel would do in the case; but Paragraph 8 of the Complaint alleges or describes the unit and that is denied. Is there a real issue in your opinion as to unit here?

MR. MCDONOUGH: There is no real issue as to unit here. I discussed with Mr. Coven—first of all in the interest of expediting this hearing, Charging Party, General Counsel and Counsel for the Respondent have worked out a stipulation which obviates the necessity for most testimony, and also,

Mr. Coven I believe is going to move to amend his Answer or at least to clarify his Answer, so that points such as that on the unit issue will not be muddied. There is no real contention, I don't believe, on the unit.

If you like, we can introduce the stipulation—

JUDGE FITZPATRICK: No, I just wanted to raise the question—

MR. MCDONOUGH: No, I don't believe there is any real issue in the unit description, is that right, Mr. Coven?

MR. COVEN: No, sir. A series of stipulations that will be received, I think will be able to explain to you what our contentions are.

Our contentions don't include any contentions as to the inappropriateness of the unit. There is certain or were certain technical denials made in the Answer because of the way

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the Complaint was phrased, and what we considered to be misnomers of the group, which was engaged in group bargaining: and as a result we denied certain parts of the Complaint, but with the stipulation we have worked out I think we can agree on what was then an appropriate unit, which we now contend is no longer an appropriate unit. And I think, I can explain more for you when we get into the case.

JUDGE FITZPATRICK: Thank you, Mr. Coven.

Mr. McDonough there is no real issue with respect to commerce I take it?

MR. MCDONOUGH: There is no real issue with respect to commerce.

MR. COVEN: We will stipulate commerce.

JUDGE FITZPATRICK: Thank you.

Do you wish to make an opening statement, Mr. McDonough?

MR. MCDONOUGH: Yes, Your Honor.

This case, Your Honor, as involves and will be set forth more clearly in the stipulation of the parties that have been agreed to, involves the history of bargaining, is an Employer's group of some ten or 12 companies.

Back in approximately January or February of 1975, the Group notified the Union and the Union notified the Employer's Group that they wished to make changes in the contract, which was expiring on or about April 18th, and they continued to bargain and at some point reached an impasse. The impasse, the

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key issue that created the impasse I believe, involved whether the drivers would be continued to be paid on a salary basis or whether it would be changed to paying them on a commissioned basis.

At a point in June of 1975, the Union struck the Respondent company here and most, but not all of the remaining companies locked out their employees. This situation continued from approximately June 23rd, until approximately November 21st of 1975. At which time the—and there will be some testimony on this particular point—at which time the Employer-Respondent, Bonanno, communicated to the Union, telling them that it had withdrawn from the Employer Group.

It is the contention of the General Counsel—excuse me—the remaining parties continued to bargain until March 13th of 1976—March or April 13th of 1976, at which point the remaining members of the Employer's Group reached agreement. And, shortly after that a request was made for Bonanno to adopt and sign the contract, which it refused to do. This charge was filed and an investigation took place in this, and

these proceedings are now under way on the basic theory that an Employer once part of a multi-employer group cannot withdraw from that group once negotiations have commenced, even though an impasse has taken place, cannot withdraw from that group. Because either of the necessary elements, the consent of the Union was not present, nor were there any

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unusual circumstances. And, as the Board has held, an impasse does not constitute circumstance.

General Counsel recognizes, Your Honor, that this case is based on Board law and, also, recognizes that the Circuits, at least four of the Circuits have held otherwise. But there is no decision in the First Circuit.

JUDGE FITZPATRICK: Have any Circuits held in favor of the Board?

MR. MCDONOUGH: None to my knowledge, Your Honor.

JUDGE FITZPATRICK: So your theory is that the effort, you maintain, of attempted withdrawal was untimely in that bargaining was in progress allbeit there was an impasse at the time?

MR. MCDONOUGH: That's correct.

JUDGE FITZPATRICK: Mr. McDonough, how long do you think this trial will take?

MR. MCDONOUGH: Through the cooperation of all the parties we have been able to work out a written stipulation as to most of the facts, and I think we can clarify some of the Answers, that I know are still left as denied.

Mr. Coven, as we talked about, with Paragraph 8, the unit question, that are not really in contention. The General Counsel intends to call one witness, Your Honor, who will be very brief.

The other parties, I can't answer for; it shouldn't take too long.

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JUDGE FITZPATRICK: Are you going to have exhibits over and above the formal papers?

MR. MCDONOUGH: I don't intend to, and I don't intend to have any others than the stipulation which includes eight Joint exhibits which are attached and made a part of it.

JUDGE FITZPATRICK: Mr. McDonald, do you have an opening statement?

MR. MCDONALD: I would simply indicate for the record, Your Honor, that although I concur with the legal theory stated by Mr. McDonough, that is to say that even if an impasse existed at the time that the withdrawal occured, violation of the Act occured.

I would further state that there is a factual question as to whether or not on November 21st, 1975, whether or not the impasse in fact had been broken or existed; and that if it in fact had been broken at that time it would be the second legal theory to support the Complaint in this case, as well as the theory advanced from Mr. McDonough.

JUDGE FITZPATRICK: Are you saying that you will recommend there was no impasse?

MR. MCDONALD: We said there was an impasse, but circumstances wherein the time of change that the time the withdrawal occured, that therefore even if one applied the law of the Circuits who have ruled on this question, a violation still would be found in this matter; because the right to withdraw

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did not exist because of the changed circumstances.

JUDGE FITZPATRICK: Mr. McDonald, do you propose to offer witnesses?

MR. MCDONALD: There will be one witness to testify at this point, Your Honor.

JUDGE FITZPATRICK: What about exhibits?

MR. MCDONALD: I have no further exhibits other than those attached to the stipulation.

JUDGE FITZPATRICK: How long do you think your witness will take?

MR. MCDONALD: Half an hour maximum on direct examination, relatively short.

JUDGE FITZPATRICK: Mr. McDonough, do you expect to finish today?

MR. MCDONOUGH: I would hope so.

JUDGE FITZPATRICK: Do you agree with that, Mr. McDonald?

MR. MCDONALD: Yes, I would, depending upon the Respondent's case.

JUDGE FITZPATRICK: Mr. Coven, do you have an opening statement?

Mr. COVEN: First, I will say that concurring with Mr. McDonough, I don't think this hearing should go beyond a day. It is unlikely as I see it, that it should go beyond a day, possibly till tomorrow morning; but I don't think that is very likely. We have stipulated to most of the material facts,

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and that stipulation will be entered as evidence. And the stipulation, of course, does not preclude any of the parties from offering additional evidence.

We intend to offer perhaps, two witnesses, we might have to call a third at this point; but I think two witnesses should do it.

The stipulation basically sets forth the facts with respect to the group bargaining here. And, so I indicated earlier, there

were certain technical denials in the Complaint; because, among other things, they talked about certain other—or they used the names of certain associations as the bargaining group, which were not actually so. We have stipulated, and the parties agree, that a group which we call the Employer's Group, bargaining with the Union for what was at the time the bargaining started, an appropriate unit consisting of all the truck drivers and helpers of various linen supply companies, which were members of this Employer's Group.

Negotiations began in March of 1975 and it developed after a number of meetings that the parties did reach an impasse,which revolved mainly about the question as to whether or not the drivers should be paid on commission basis, which was the demand of the Union, or whether they should be paid on an hourly basis, as they had been under the previous contracts. Incidently, I might say that in the past, the group had bargained with the Union had reached an agreement on a contract,

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this was the last contract in 1972; and they all signed individual and identical contracts with the Union.

On or about June the 23rd of 1975, the Union called a strike—not against all the members of the group, but only the Respondent herein—and I think it would be simpler to refer to the Company as Bonanno from here on in—they called a strike against Bonanno at which point the other members of the group all, or substantially all, locked out their employees; and the parties continued to operate from, there on in.

There were continuing negotiations, and on November the 21st, Bonanno, taking the position that because of the continuing or because there had been a continuing impasse withdrew from the group; served notice on the group as well as giving notices to the Union.

Now, it is our contention, Your Honor, that the Company, in view of the circumstances had a right to withdraw from the group at that time, in view of all the circumstances, including of course the strike, the fact that there was a strike against Bonanno and not the other companies, and because of the continuing impasse that Bonanno had a right to withdraw from the group bargaining.

We recognize, of course, that the Board law is not or has not reached a point where the Board agrees that an impasse gives an Employer a right to withdraw from the group, although as Mr. McDonough points out there have been four different

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circuit courts, which we will cite, Your Honor, in our brief after the close of the hearing, all to the contrary.

JUDGE FITZPATRICK: Has the Board spoken recently on this point?

MR. COVEN: They haven't, as far as I know, had any cases involving this point, since the last circuit court decision, which was a decision in the Third Circuit, NLRB, The Beck Engraving Comany, which was in 1975.

As far as I know, the Board has not been confronted, or at least they haven't decided any case on the question since then; but that is our primary position.

Our secondary position is that even in any event, the facts and circumstances since the withdrawal show that the Union in effect assented to the withdrawal, and even if the Board does not recognize the impasse, gave the Company the right to withdraw, we say that we are within the scope of Board law in taking the position that there has been a, in effect an assent or consent by the Union to the withdrawal, based on all of the circumstances which have occured since the withdrawal.

And, among other things, the testimony will show, and I think the stipulation contains some of the material facts, the parties continued to bargain, that is the remainder of the Group continued to bargain; the union continued to bargain with the group, never took the position that Bonanno would

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be bound by any contract that might be entered into, and they didn't actually bargain, and despite Mr. McDonald's statement, that there was no impasse, the facts will show, we say will show that an impasse continued at least and until April 13th of 1976, when the Union finally withdrew its position that the Employees should be paid on a commission basis, and the parties, the then parties, the people who remained in this group entered into an agreement.

We say the complete facts and circumstances, and we will have testimony on this, Your Honor, show that in any event there was a implicit agreement by the Union to the withdrawal in that the Union at this late date, and they made no demand on Bonanno until after they had reached their agreement with the remaining members of the group, they should not be heard at this time, to say that Bonanno had no right to withdraw from the group. That's about all I can say at this point, Your Honor.

JUDGE FITZPATRICK: Are you arguing an Estoppel Theory?

MR. COVEN: That's part of it.

We say that, number one, there was an implied assent that the Union should be stopped from taking the position that Bonanno was bound by those agreements, since in effect they continued to bargain, they reaped the benefits of the bargaining, a lock-out was terminated as soon as Bonanno withdrew from the group; and the Union didn't take the position

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at that time that they didn't recognize Bonanno's withdrawal. They recommenced and they continued bargaining; and, as I said, they should not be heard at this time, to contend that Bonanno should be bound by the new agreement.

JUDGE FITZPATRICK: Just a matter of information, did bargaining continue during the strike?

MR. COVEN: Yes.

JUDGE FITZPATRICK: Mr. McDonough, you may proceed.

MR. MCDONOUGH: Your Honor, by agreement of the parties we have worked out a stipulation of agreement to most of the facts in this case with reservation on the last page of the stipulation that any party may introduce any relevant testimony. However, this stipulation covers most of the ground, I believe, and there are eight exhibits attached to it. And I would like this marked for identification as Joint Exhibit No. 1, and I would offer it in evidence, Your Honor.

JUDGE FITZPATRICK: Any objection?

MR. MCDONALD: No objection.

MR. MCDONOUGH: Maybe we should mark this as Joint Exhibit A, since there is Joint Exhibits 1 through 8 attached.

(The document above referred to was marked as Joint Exhibit A (1 through 8) for identification.)

JUDGE FITZPATRICK: There being no objection, Joint Exhibit A is received.

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(The document above referred to, heretofore marked Joint Exhibit A(1 through 8) inclusive, for identification, was received in evidence.)

JUDGE FITZPATRICK: Is this something I should read?

MR. MCDONOUGH: Yes, I think you should, Your Honor, then it will be—

JUDGE FITZPATRICK: I will take a brief recess now, and I will come back when I am done reading.

(a short recess was taken.)

JUDGE FITZPATRICK: On the record.

Mr. McDonough?

MR. COVEN: If You want me to clarify. Mr. McDonough, has asked me if I would clarify our position with some of the denials in our Answer.

I don't think it is necessary for us to amend our Answer, but I will make clear that despite our denials in the Answer, we are not contesting the fact that a unit consisting of the drivers and the helpers of the members of the Employer's Group was appropriate at the time that bargaining commenced.

We are, of course, taking the position that we are not bound by that unit once Bonanno withdrew. Bonanno's withdrawal changed the appropriateness of the unit. As a matter of fact, it is going to be our contention really that the Union itself by commencing a strike against Bonanno and not against the other members of the group in effect fractured the unit; but we are not going to contest the fact that this unit was

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appropriate for purposes of collective bargaining at the time the bargaining commenced.

JUDGE FITZPATRICK: Would you say, without giving away any legal position you might have, that as of this time there doesn't appear to be a unit issue for litigation before me in this particular proceeding? You do not see an issue to be litigated right now?

MR. COVEN: The only issue to be litigated really is whether or not the Unit, which had been appropriate, was fractured either by the action of the Union in striking against Bonanno or—and/or by Bonanno's withdrawal. That is the issue to be presented to you; but the appropriateness of the unit up to that point is not an issue.

JUDGE FITZPATRICK: I see.

MR. COVEN: Now, also with respect to commerce, there were certain technical denials that were made because the Complaint spoke of various associations which are not really part of this case; we will agree that Bonanno is engaged in commerce within the meaning of the Act. That Bonanno's operations fall within the large jurisdiction, that is, Bonanno purchases at least a minimum of $50,000 of various supplies and other materials from outside the State, and we will agree that Bonanno was subject to jurisdiction of the Board.

I don't think it is material as to whether this association, which is named in the Complaint, or the Employer's Group

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itself, which is named in the stipulation, were themselves engaged in commerce. I don't think that is material—

JUDGE FITZPATRICK: Let me ask Mr. McDonough—in presenting his case, are you going to rely on the fact that the association, the contention that this association is in commerce—

MR. MCDONOUGH: Not necessarily, Your Honor.

JUDGE FITZPATRICK: If you have an admission that the Respondent is in commerce, will that suffice?

MR. MCDONOUGH: I think that will suffice: because our fortior, as part of the Employer's Group up until attempting to withdraw, and then the jurisdiction continued.

JUDGE FITZPATRICK: I don't see that we have a commerce issue.

MR. COVEN: No, I don't either, Your Honor.

I am not sure what else, Mr. McDonough, you wanted me to clarify, I will be happy to make a statement.

MR. MCDONOUGH: Let me just say, in Paragraph 9 of the Complaint, the issue that the Union represented the employees in the appropriate unit set forth in Paragraph 8; I think Mr. Coven's argument is the same.

MR. COVEN: Yes, we will agree that the Union did, at the time of commencement to negotiations, represent the majority of the employees within that unit, that is the unit composed

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of the employees of the Employers' Group.

JUDGE FITZPATRICK: Is that sufficient for your purposes?

MR. MCDONOUGH: That is sufficient, Your Honor.

I think, just to clarify a little further, Paragraph 10 is taken care of in the stipulation by Joint Exhibit No. 4, attached to it; and I think Mr. Coven will agree with that.

MR. COVEN: We do agree that Bonanno did authorize the negotiating committee of the Employer's Group to act in its behalf in negotiation of the contract, that was on February 19th, of 1975.

JUDGE FITZPATRICK: There is no question that the Respondent at one point was a member of the Group?

MR. COVEN: No question at all.

JUDGE FITZPATRICK: Thank you.

MR. MCDONOUGH: And in Paragraph 11, I think it speaks for itself from the Complaint, "On or about November 21, 1975, Respondent, by letter attempted to revoke its authorization . . .", I used the word "attempted" in the Complaint, and Mr. Coven's position I believe is that the attempt was effectual.

MR. COVEN: And, also he spoke of the Association rather than the Employer's Group, and for technical reasons we couldn't agree that even attempt to withdraw from this particular association that he speaks of, which has nothing to do with this case.

JUDGE FITZPATRICK: Was paragraph was that now?

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MR. MCDONOUGH: That was 11, I believe.

JUDGE FITZPATRICK: There is no real issue is what you are saying?

MR. COVEN: No

MR. MCDONOUGH: No.

And Number 12 is conclusionary.

JUDGE FITZPATRICK: Yes.

MR. MCDONOUGH: Number 13 is taken care of in the stipulation, Paragraph 15, in Joint Exhibit No. 6, and I think Mr. Coven will agree to that. Is that correct?

MR. COVEN: Well, we will agree that the remainder—we did agree that the remainder of the employer's Group did reach an agreement with the Union on April 13th of 1976; and Mr. McDonough has included a copy of the agreement as part of the stipulation.

JUDGE FITZPATRICK: The stipulation will speak for itself, I guess.

MR. MCDONOUGH: All right, thank you.

MR. COVEN: May I ask one question, Your Honor, before we start, on ground rules here?

As I understand it, Mr. McDonough, Counsel for the General Counsel, has control of the case. It is his Complaint. And he is going to support his Complaint with testimony, basically, of course, the stipulation does give most of the material facts.

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Now, it seems to me that if Mr. McDonald has any witnesses in support of the Complaint that he wishes to offer, I think they should be offered through Mr. McDonough. I am not sure just what the—Your Honor's policy is with respect to these matters. I know that in the past my experience with the Board, and with the Administrative Law Judge's or Trial Examiners before they became Administrative Law Judge's, some Judges permit the Charging Party to offer witnesses of his own, others in my experience, enunciate a policy that any witnesses in support of a Complaint must be General Counsel's witnesses. And, I am just wondering what your ground rules are?

JUDGE FITZPATRICK: In any particular proceeding, of course, it depends on how the question arises, in this particular type of proceeding of course you have two parties, that at one point were bargaining; and you have a contention that there has been refusal to bargain. My understanding is that the Board will extend to the point that General Counsel has responsibility and the discretion to frame the case as he sees fit in support of the Complaint, and to call such evidence as he wishes.

To require him to call witnesses proposed by another party would deprive him of that independence, accordingly he cannot be compelled to call witnesses he does not choose to call.

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On the other hand, the Board has spoken, and it is my understanding that the Charging Party is a party to the proceeding, and may offer evidence in support of a Complaint, even though the evidence may go to a variant theory of the Complaint; and that the Board considers this appropriate

because in the final analysis it may adopt that position and reject that of General Counsel's or at least as the position is presented to it.

Those would indicate what my ground rules would be. I would receive evidence in support of the Complaint if offered by the Charging Party. So, I think what I will do is I will ask Mr. McDonough to offer his evidence, and then I will look to Mr. McDonald, and ask him whether he has evidence to offer and then look you you, Mr. Coven.

At that point you will have presented all of the evidence in chief from both of the opposing parties, and you can see more clearly then how your situation stands.

I will follow the same order in asking counsel to question witnesses. If Mr. McDonough calls witnesses, he will question the witness first, and I will then look to Mr. McDonald to question the witness, and then to you. Mr. McDonald's witnesses, if he calls any, I will have him question the witness first, and the I will look to Mr. McDonough, and then I will look to you. If you call witnesses I will look to you to question the witnesses first, and then I will look to Mr.

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McDonough, and then I will look to Mr. McDonald.

All right.

Mr. McDonough, you may proceed.

MR. MCDONOUGH: Thank you, Your Honor.

The General Counsel calls Herbert Salter.

Whereupon,

HERBERT T. SALTER

was called upon as a witness, by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

JUDGE FITZPATRICK: Please be seated and give your name and address to the Reporter.

THE WITNESS: Herbert T. Salter, field representative, Teamsters Local 25, 544 Main Street, Charlestov .i, 02129.

DIRECT EXAMINATION

Q. (By Mr. McDonough) Mr. Salter, in your role you stated you were field representative for the Charging Party, Local 25. In your role as field representative, do you from time to time become involved in contract negotiations?

A. I do.

Q. And where you involved in negotiations between the Employer's Group, at least at the commencement, starting of it with Mr. Bonanno and Local 25, were you involved in those negotiations?

A. I was.

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Q. I am going to show you a copy of what has been introduced into evidence as Joint Exhibit 4 attached as a part of Joint Exhibit A, the stipulation referred to previously; and ask if you have seen that document?

A. I have.

Q. Have you received a copy of this document?

A. Yes, I have.

Q. Do you recall when you received a copy of the document?

A. I believe it was November the 24th, 1975.

Q. Prior to November 24th, when you received that; did you have any conversation with the signatory of that, Charles D. Bonanno?

A. I did.

Q. Do you know Mr. Bonanno?

A. Yes, I do.

Q. Would you identify him in the room here today?

A. The gentlemen in the blue suit sitting at the table to the right of yours.

Q. Do you know his voice?
A. I do.
Q. Could you tell us the circumstances that preceded your receiving this letter?
A. I was told that someone had made an attempt to deliver the letter by hand to our office on Friday Afternoon, November 21, 1975; not being there I wasn't able to receive the message

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that was supposed to have come to me; but a gentleman identifying himself as Mr. Bonanno left two telephone numbers with the explicit request that I contact him at either one of these numbers in the course of the afternoon or early evening, which I did. And, he answered the phone, and he said he had a letter that he wanted to read to me over the phone, which he did.

In substance I would say it is the letter that I received. He told me I would be receiving it in the mail, at the earliest possible moment.
Q. And to the best of your recollection, the substance that he read to you was as you just have read this Joint Exhibit No. 4?
A. Yes, it was.
Q. All right.

Was there any other conversation at that time between you and Mr. Bonanno, other than what you have just said?
A. No, there wasn't.
Q. Did you say good bye or okay, or anything of that nature?
A. I know I said something to the effect that I would wait until I received the letter to confirm his telephone call.
Q. And is that as far as it went?
A. That was as far as it went.
Q. All right.

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Since November 21st to today, have you personally talked, either in person or by telephone, with Mr. Bonanno?
A. No, I haven't.
Q. All right.

MR. MCDONOUGH: Thank you, I have no further questions of this witness

JUDGE FITZPATRICK: Mr. McDonald?

MR. MCDONALD: I have no question at this time, Your Honor.

JUDGE FITZPATRICK: Mr. Coven?

CROSS EXAMINATION

Q. (By Mr. Coven) Mr. Salter, is your recollection very good as to just what the conversation entailed on that day, complete contents of the conversation?
A. I had very little to say.
Q. You do remember though that he read to you in effect what was contained in Joint Exhibit 4?
A. He said this was what he tried to deliver to me in the afternoon when I wasn't there.
Q. Did you ask whether he was going to mail a copy to you?
A. No, I did not.
Q. Did he say he was going to mail a copy to you?
A. He said he was.
Q. Do you remember what, if anything, you said to him

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after that?
A. Nothing, except that I would probably check with our attorney and wait until we got the letter before we got anything—
Q. That is your best recollection at that time?
A. That is my best.

MR. COVEN: No further questions.

JUDGE FITZPATRICK: Any redirect?

MR. MCDONOUGH: No, that's all, Your Honor.

JUDGE FITZPATRICK: Mr. McDonald, any questions?

MR. MCDONALD: Nothing, Your Honor.

JUDGE FITZPATRICK: Thank you, you may step down.

(Witness excused.)

MR. MCDONOUGH: General Counsel has no further witnesses to call, Your Honor.

JUDGE FITZPATRICK: Does that complete your case?

MR. MCDONOUGH: That completes my case in chief, with the reservation of calling Mr. Salter as a rebuttal witness.

JUDGE FITZPATRICK: Mr. McDonald, do you have any evidence to offer?

MR. MCDONALD: Mr. Louis Katz, please.

Whereupon,

LOUIS KATZ

was called upon as a witness, by and on behalf of the Charging Party and, having been first duly sworn, was examined and testified as follows:

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JUDGE FITZPATRICK: Please be seated, and give your name and address to the Reporter, and please spell your name.

THE WITNESS: Louis Katz, K-a-t-z, 50 Dinsmore Avenue, Framingham, 01701.

JUDGE FITZPATRICK: Mr. McDonald?

DIRECT EXAMINATION

Q. (By Mr. McDonald) Mr. Katz, you are here as a result of a subpoena issued by the National Labor Relations Board at my request in this matter, is that correct?

A. That's correct.

Q. What is your occupation, Mr. Katz?
A. Vice president of Standard Linen.
Q. That is a member of the Employer's Group that is involved in this hearing?
A. That's right.
Q. And, as vice president, have you been in charge of labor relations matters for Standard?
A. Yes, I have.
Q. During the course of the negotiations, prior to November 21st of 1975, you recall, were you not, that your employees walked out during this period of time.
A. From June 23rd to November; yes, sir, correct that it was June 24th.
Q. And were there meetings among the members of the Employer's Group during this period of time to discuss bargaining

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strategy?
A. Um-hum.
Q. And sometime in November of 1975, was a decision made to change the strategy that had been relied upon by the Employer's Group prior to that time—

MR. COVEN: I object.

JUDGE FITZPATRICK: What is the objection?

MR. COVEN: Object, it is immaterial. The Complaint alleges that—let me say this, the stipulation shows that there was bargaining during all this time in question. There is no allegation made of any bad faith bargaining.

The Union—the Company, the Employer's Group took various positions during the bargaining. What led up to the Employer's Group taking the various positions, any matters that went on within the Employer's Group, I maintain has absolutely no relevance to this proceeding.

The important question is what position did the Employer's Group take, the Employer's Group did bargain; there is no question of bad faith bargaining. As a matter of fact the Employer's Group did eventually enter into an agreement some four months after or five months after Bonanno withdrew. I therefore contend that to go into this is to go into an area that has absolutely no relevance to this proceeding.

JUDGE FITZPATRICK: What do you claim for the question?

MR. MCDONALD: Your Honor, we will take the position

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that a withdrawal of Bonanno from the Employer's Group was as a direct result of a change in position that the Employer's Group had with respect to its negotiations with Teamsters Local Union No. 25; and that this change in bargaining position was sufficient to put Bonanno on notice that if in fact the change of position would not end the impasse, at least the intent to introduce the position in negotiations would have changed the impasse situation and effectively broken it. It was therefore improper for him to withdraw after the change of strategy had occured.

MR. COVEN: May I—

JUDGE FITZPATRICK: Let me comment, it would appear to me, based on the theory propounded by the Union to be relevant. It is hard to say since I know very little about what happened here, what is relevant and what is not that relevant; and at first blush it would appear to be relevant to the theory he propounds.

Now, whether that theory is sound or not; I don't know.

You were going to say something?

MR. COVEN: Yes, Your Honor.

May I say that the stipulated facts show that there has or

had been an impasse on commissions, mainly on commission basis. The stipulation also shows, and it is agreed on by everybody, that even after Bonanno's withdrawal the parties continued to negotiate and it was only after several meetings

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which culminated in the meeting of April 13th, 1975, some five months later, almost five months later that the Union, the Union finally changed their position on the commissions and an agreement was reached that—which maintained the hourly rate of pay which was the position of the Employer's Group, the position they had taken.

So, if the impasse was broken by anybody, the impasse was broken only on April the 13th, 1975 when the Union withdrew its demand for commissioned payments. The stipulation shows that, and I don't see how anything that this witness might testify as to positions that the various members of the Employer's Group discussed during their own meetings has anything to do with the case.

JUDGE FITZPATRICK: Thank you gentlemen.

Objection overruled.

Continue.

Q. (By Mr. McDonald) Mr. Katz, I direct your attention back to the period before November 21st, 1975—incidently, I would like to show you a copy of Joint Exhibit 4, dated November 21st, 1975, to the Linen Supply Negotiating Committee, Mr. Charles D. Bonanno, indicating that an attempt to withdraw; and ask if you have ever seen that document before?

A. Yes, sir.

Q. Prior to November 21st, 1975, Mr. Katz, was there a meeting of the Employer's Group at which a change in strategy

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was discussed by the members, including yourself of this Employer's Group that was bargaining with Local 25?
A. At every meeting we had a change in strategy.
Q. Was there a change of strategy with respect to the wages issue that occured shortly before November 21st of 1975?
A. Are you talking the time Mr. Bonanno was a member of the group?
Q. Yes.
A. No, we stayed to the salary part of it only, if that is what you are referring to.
Q. When you say you stayed to the salary part, you mean you hadn't decided to go to the commission?
A. No.
Q. Was there a decision made with respect to increasing the salary?
A. There was some talk whereby the record shows we did make different offers during the time, which were goosed up.
Q. Directing your attention to shortly before the November 21st, the letter of Mr. Bonanno, was there a decision made by the Association to offer an increased salary proposal to the Local 25 bargaining unit?
A. Other than what I just told you, counsel, I don't remember when, but we did make offers of increasing from the first inception until that time; I don't remember all this up here,

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no way.
Q. Did Mr. Bonanno at any time shortly prior to November 21st, 1975, express an opinion with respect to an increased wage offer—
MR. COVEN: May I object, Your Honor.

Although this is somewhat different from what Mr. McDonoughs' contention is; Mr. McDonald's contention is, as I understand it and the reason you have allowed this in is that the change of position had broken the impasse.

Now, the witness has testified with respect to that matter. Now with respect to what Mr. Bonanno may or may not have said during those meetings, and in no way would have broken the impasse. The testimony is apparently that the impasse continued, and as I say, the facts show the impasse did continue until April 13th, when the Union withdrew its commission request.

I think Mr. McDonald is going beyond what Your Honor allowed him, the theory on which you allowed him to proceed was they had the impasse or claimed that the impass was broken.

The position Mr. Bonanno took during discussions has no relevance to the question of breaking the impasse.

JUDGE FITZPATRICK: How could it be admissable evidence in this proceeding, counsel?

MR. MCDONALD: Your Honor, I would simply indicate that

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if a decision was made by the Employer's Group to change the strategy, strategy that may very well have led to a contract and Mr. Bonanno refused to go along with the strategy; that we will take the legal position that at that point it would be a violation of the law for him to withdraw from the Employer's Group.

Simply, it indicates a change in strategy made, an objection to the withdrawing member to the strategy taken by the Group that he committed himself to belong to, and to conform to. And, when a change is made in strategy that may very well lead to the execution of a collective bargaining agreement; one dissident member decides no I am not going to go

along with this group anymore, I don't want to be bound by this group that is there negotiating for me as it appears there may be some success along those lines, I'm getting out. We think and we would take the position as a matter of law that he could not do that.

MR. COVEN: If Your Honor please—

JUDGE FITZPATRICK: Just a second, I will come to you. But doesn't that have to be on the issue involved here? The question here is whether there was or was not an impasse, right? And doesn't it have to deal with the particular thing that involved the impasse, the particular issue? I would assume without having any firsthand knowledge that the negotiating committee that is negotiating for a group would have many

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variations and many proposals and many disagreements on many issues, different kinds of things. When then given the wide range of topics that can be considered in bargaining of one who may want to withdraw expresses any disagreement on any one of the innumerable issues which might be discussed by the company, you would have him unable to withdraw?

MR. MCDONALD: The issue, was an issue which was holding up the parties, Your Honor, the issue was economics: how much money will you give your employees to continue working for you; and if it can be established that a position was taken to increase that economic offer to such an extent that the Union might agree, then I think it is reasonable to assume that the possibility existed for a break in the impasse. It wasn't a question of discussing whether or not there would be a uniform allowance or an unrelated issue; it was a central issue.

MR. COVEN: If I may, Your Honor, the question, and this

is from the witness's own testimony, the question was not of wages. The question was basically, and basically was whether or not the companies would agree to the Union's demand for commissions method of payment; and the witness himself has testified that there was no change in that basic strategy of resisting commissioned payment. And, the facts as stipulated show, actually, that the Union finally agreed to that position. The witness has testified that there may have been various

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offers made or different changes in offers made; but he has testified there was never any change in the basic strategy, that is his own testimony. And, I say therefore that whatever position Bonanno may have taken at any given moment with respect to a particular phase of an offer is not material. I think we will open ourselves up to all sorts of a Pandora's Box of going into what position did Bonanno take, what position did Katz take, what position did other members of the bargaining committee take; and it really doesn't matter.

JUDGE FITZPATRICK: I am not sure whether it does or not, at this point it seems to me it might matter to the Labor Board, accordingly I will overrule the objection.

Q. (By Mr. McDonald) Mr. Katz, again, directing your attention to shortly before November 21st, 1975, at your Employer's Group meeting, did Mr. Bonanno express an opinion with respect to a shift in strategy of offering a higher wage proposal to the Union?

A. I don't really recall, but during our negotiations we all had various thoughts—

MR. COVEN: Excuse me, may I interupt?

If the witness testifies he doesn't recall, I think that is an answer. For him to start testifying as to other matters that developed during negotiations is not responsive to the question.

JUDGE FITZPATRICK: It might not be responsive, but I view that as an objection. I am not sure that it is material

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or relevant though, and I will allow you to cut him off, and you can ask him another question on whatever line you want to.

Okay.

Q. (By Mr. McDonald) You do recall a meeting shortly before November 21st, 1975?

A. We have had meetings, I don't recall what date. We had meetings prior to that date.

Q. Let's say shortly before, within a couple of weeks?

A. I am sure we did.

Q. And isn't it true, that the majority of the associate Employer's Group decided they would like to offer a higher wage offer?

MR. COVEN: I object.

JUDGE FITZPATRICK: Overruled.

THE WITNESS: I think I am repeating myself, but throughout negotiations we always looked—

Q. (By Mr. McDonald) Would you please just attempt to direct your attention—

A. I don't really recall exactly. We always looked to close the negotiations to a higher hourly rate from a low point or a present point to date.

Q. Do you recall Mr. Bonanno saying that if that was the position of the Employer's Group that he was going to get out?

MR. COVEN: I object.

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JUDGE FITZPATRICK: Overruled.

THE WITNESS: I am trying to search my memory. I don't

really remember it. It is possible he said it. It is possible he didn't.

Q. (By Mr. McDonald) Do you recall telling Mr. Salter last Friday that in fact was what he said?

MR. COVEN: I object, he is cross-examining his own witness. He is trying to impeach the credibility of his own witness.

MR. MCDONALD: I am trying to refresh his recollection. He is a member of the Employer's Group, and I believe I should be given a little more leeway—

JUDGE FITZPATRICK: He is a Union witness.

Overruled, you may answer.

THE WITNESS: To my recollection I think he said it, I might have said it, I think everybody in the group said it at one given point. The money got too high, we said if that is going to be it, I don't want no part of it.

Q. (By Mr. McDonald) I want you to direct your attention to the period just before the withdrawal occured, and my question was: Do you recall telling Mr. Salter last Friday that in fact Mr. Bonanno said during this period that he would not go one penny higher and if that was the decision he would withdraw?

A. More or less.

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Q. Does that refresh your recollection as to what occured during this period?

A. (Witness nodded head.)

Q. Is your answer yes?

A. Yes.

MR. MCDONALD: Nothing further.

MR. MCDONOUGH: I have no questions of this witness.

JUDGE FITZPATRICK: Mr. Coven?

CROSS EXAMINATION

Q. (By Mr. Coven) Do you have any clear recollection of this conversation you spoke off?

A. You are talking about last Friday?

Q. No, I am talking about the alleged conversation which you say Mr. Bonanno made some reference to withdrawal?

A. Again, counsellor, I think we all said it in times of negotiations at one time or another. If you go another penny count me out—to that effect, what credence you want to take at that point . . . we did say it periodically, I think I said it myself that I would withdraw certain things and I said I would do certain things if they didn't agree on it.

Q. That is your best recollection now of what was said?

A. (Witness nodded head.)

Q. Can you tell us when Mr. Bonanno made this statement along the lines—

A. No way I could tell you what meeting this happened.

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Q. You have no way of knowing whether it was as early as perhaps May or June of 1975?

A. I know it is prior to November 23rd or 24th?

Q. That's because that is when he withdrew from the Association?

A. Right.

Q. All you know is sometime during the course of—

A. Negotiations.

Q. —negotiations, it might have been months before the 21st or before the 21st that Mr. Bonanno, like the rest of you, indicated that if things got unbearable he would have to get out or words to that effect?

A. Right.

Q. You were part of the negotiating committee?

A. Yes, sir.

Q. Did you attend the final meeting on April 13th of 1976? The final meeting when the final agreement was reached on the contract?
A. Um-hum.
Q. And that was where, at the office of the Federal Mediation Conciliation Service?
A. I believe so.
Q. And was that the first time that the Union had agreed to withdraw its demands for commissioned payments?
A. Yes, sir.

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Q. And who was the spokesmen for the Employer's Group at that meeting?
A. Mr. Walsh and Mr. Tom Reardon.
Q. And they had been the spokespem at all the meetings, is that correct?
A. Yes, sir.
Q. And they were the Employer's Groups' attorney?
A. Yes, both of them.
Q. The firm of Warner & Stackpole?
A. Correct.
Q. Located here in Boston?
A. Correct.
Q. Okay.

Do you remember at that meeting on April the 13th of 1975, whether there was any discussion as to whether or not the—Mr. Walsh or Mr. Reardon or the Employer's Group was negotiating for Bonanno?
A. Not at that meeting.
Q. Do you remember Mr. Walsh or someone saying at that meeting that, that they were not representing Mr. Bonanno any longer?
A. Yes, sir.

Q. And, to the best of your recollection, who made such a statement?

A. I know I heard it. I don't know if it came from our

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side or the Union's side, but somebody did say that whatever arrangements were made were not including Bonanno.

Q. I see.

A. It could be our legal—I am not too sure on that. I think it was them possibly.

MR. COVEN: I have no further questions.

JUDGE FITZPATRICK: Mr. McDonald, any more questions?

MR. MCDONALD: Yes, Your Honor.

REDIRECT EXAMINATION

Q. (By Mr. McDonald) Mr. Katz, again, directing your attention to the conversation you had last Friday with Mr. Salter; is it not true that you told him that the Employer's Group, shortly before the withdrawal, decided they were going to offer a higher wage increase—

MR. COVERN: Excuse me, may I hear the question? I'm sorry, I missed part of the question. May I hear it again? I think I am going to object to it.

JUDGE FITZPATRICK: Would you read it back, please?

(The pending question was read by the Reporter as follows:

"Q. Mr. Katz, again, directing your attention to the conversation you had last Friday with Mr. Salter; is it not true that you told him that the Employer's Group, shortly before the withdrawal, decided they were going to offer a higher wage increase—").

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MR. COVEN: I object to that as immaterial, and furthermore, it appears to be an attempt to impeach his own witness.

This was testified fully with respect to matters Mr. McDonald brought out, and this doesn't add anything to it.

JUDGE FITZPATRICK: I would agree, unless this is preliminary to something else.

A question as such, if answered, would not seem to add anything or help anything.

MR. MCDONALD: I think in view of one or two of the questions Mr. Coven asked, I think there was some ambiguity in the record with respect to what happened shortly before the November 21st withdrawal; and I would simply like to clarify the record on this matter, since it is important to the theory we are advancing.

JUDGE FITZPATRICK: I don't want to prevent you from clarifying matters. I will overrule the objection, and in my mind the question is preliminary, you may answer it.

THE WITNESS: Repeat the question please.

Q. (By Mr. McDonald) Do you recall Mr. Katz, your—in your telling Mr. Salter last Friday that shortly before Bonanno's withdrawal at a meeting of the Employer's Group, the Employer's Group had decided they were going to make an increased wage offer to the Local 25—

A. I did say that to him, and I hate to make a long story out of this, but—

Q. Your answer is yes, you did say that? Is that correct?

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JUDGE FITZPATRICK: Did you finish your answer?

THE WITNESS: To the counsel; no.

JUDGE FITZPATRICK: Finish it.

THE WITNESS: Thank you.

Again, during negotiations we always looked at a higher rate, which we actually did to try to settle the thing—but I did tell that to Mr. Salter, and Friday, that we did raise the ante

up in the hourly wages. We agreed to a talk about it, and we did talk about it.

Q. (By Mr. McDonald) And what you told Mr. Salter was true?

A. Yes.

Q. And as a result of that Mr. Bonanno expressed the opinion that he would pay not one penny more—

A. I don't know if it was at that particular meeting.

MR. COVEN: I object. He is attempting to get the witness to vary his prior testimony, as a matter of fact he is attempting to impeach his own witness.

He is bound by the witness's testimony; this does not go into any cross examination on my part.

JUDGE FITZPATRICK: Overruled.

Q. (By Mr. McDonald) Do you recall telling Mr. Salter that after that decision was made Mr. Bonanno said he was not going to pay one penny more and that he was going to get out?

A. I think he said it.

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Q. And in fact, shortly thereafter he did get out, is that correct?

A. I don't know how close we are talking about, counsellor, he did say it—again, I am repeating my own self.

During the course of negotiations we did say that we raised it more, and that if we did this we would get out; how much prior to November 21st, I can't pinpoint the time.

Q. You told Mr. Salter Friday it was shortly before that—

A. Shortly before can be two months before or a month before—

MR. COVEN: I object.

JUDGE FITZPATRICK: Overruled.

THE WITNESS: Shortly before could be a month before.

Q. (By Mr. McDonald) You did recall telling Mr. Salter that?
A. Right.
Q. You further recall telling Mr. Salter that in your opinion that is the reason he got out?

MR. COVEN: I object to whatever his opinion was.

JUDGE FITZPATRICK: Sustained.

MR. MCDONALD: I have no further questions of the witness. I would just indicate the witness is here under subpoena and I request that he would remain for purposes of examination on rebuttal.

JUDGE FITZPATRICK: Any questions, Mr. McDonough?

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MR. MCDONOUGH: I have no questions.

JUDGE FITZPATRICK: Mr. Coven?

MR. COVEN: May I have a moment, please?

(Pause.)

RECROSS EXAMINATION

Q. (By Mr. Coven) Mr. Katz, do you remember at some time during the early stages of negotiations having some discussion with Mr. Bonanno—excuse me, I will withdraw that for a moment.

May I have a moment?

JUDGE FITZPATRICK: Yes.

(Pause.)

MR. COVEN: I will withdraw the question. I have no further questions of the witness.

JUDGE FITZPATRICK: Thank you, Mr. Katz, you are excused.

(Witness excused.)

JUDGE FITZPATRICK: Anything further, Mr. McDonald?

MR. MCDONALD: I have no further witnesses at this time.

JUDGE FITZPATRICK: Mr. Coven, what is your pleasure?

MR. COVEN: At this point move to dismiss the Complaint on the grounds that the testimony shows that there was a continuing impasse on November the 21st, 1975, which had continued from at least May, May 15th, 1975. And, the testimony shows further that the Union had struck the Bonanno Company on June the 23rd, and the strike continued at least

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until November—well, it is continuing as of this moment, as a matter of fact. The stipulation shows that this is true.

The testimony and the stipulation also shows that all of Bonanno's striking drivers had been permanently replaced between June the 23rd, and November 21, 1975. And, consequently, we move to dismiss on the grounds that these circumstances, including strike, the replacement of drivers, the continuing impasse gave Bonanno the legal right to withdraw from the Association. And this has been so held by four circuit courts of appeal, and including the latest case, NLRB against Beck in the Third Circuit; on that basis we move, Your Honor, to dismiss the Complaint on the basis that the General Counsel has failed to make out a case.

JUDGE FITZPATRICK: Mr. McDonough?

MR. MCDONOUGH: Yes, Your Honor, General Counsel's theory is based primarily on what is Board law, and in the latest most recent case which the Board decided this issue was that, and reiterated the long standing rules for withdrawal was Highway Billboards in 206 NLRB 22, Page 22, excuse me. Although it is true that the Circuit Court in that instance refused to enforce the Board's Order on its specific finding that impasse does not constitute—and the Board's specific finding, that impasse did not constitute an unusual

circumstance that would deprive the Employer of its economic viability,

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which I believe is the phrase that is used. That no permission to withdraw has been recognized by the Board.

I concede there are four circuits, as I said before, which have refused enforcement on almost identical issues as this; but it is still Board law, and as is the policy of the Board, there is no outstanding decision on this issue in the First Circuit.

JUDGE FITZPATRICK: Excuse me, what is the status of Highway Billboards? Enforcement denied?

MR. MCDONOUGH: Enforcement was denied in 500 Fed. 2nd, Page 181; its 87 LRR 2203.

JUDGE FITZPATRICK: Proceed, what circuit?

MR. MCDONOUGH: The Fifth Circuit, Your Honor.

The initial case is at 191 NLRB 244, and the remand of that case was at 473 Fed. 2nd 679, where the court sent the issue back to the board to determine whether or not that an impasse constituted an unusual circumstance to be sufficient to withdraw, to permit an Employer to withdraw from a multi-employer association.

The Board founded that an impasse was not sufficient to create an unusual circumstance and then on its petition for enforcement of its further order, the Fifth Circuit denied the Board's petition; that is the status of that case, but the Board law still stands and that is what General Counsel's theory is based on.

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JUDGE FITZPATRICK: When was that?

MR. MCDONOUGH: It was in 1974, Your Honor.

MR. COVEN: The Board case?

MR. MCDONOUGH: The Board case was in 1973.

JUDGE FITZPATRICK: You are advising me as to what General Counsel's theory is, and its current position is, up to date position. How do you know what the Board's position is, since I am bound by Board Law?

MR. MCDONOUGH: As am I, that is the Board's most recent decision on this particular issue, and there is no decision on this issue in the First Circuit, which is the jurisdiction of this Region.

JUDGE FITZPATRICK: Mr. McDonald, do you wish to be heard?

MR. MCDONALD: I would concur with remarks made by Counsel for the General Counsel.

I would further add that it is evident that the Board is and has not changed its position, since in the other circuits where this has been tested the Board position has remained the same, and the Board has remained consistent. And from that I think we can draw the inference that the Board, at least in those circuits which the issue has not been decided, will maintain its position until a decision by the circuit or perhaps by a decision by the United States Supreme Court.

JUDGE FITZPATRICK: I have in mind, Counsel, once

enforcement is denied in any particular case, that would seem to end litigation of the case; unless the Board would have a basis for seeking certiorari in the Supreme Court. I think they would be able to ask for it, only on the important question theory, since there doesn't appear to be a conflict of circuits here. I don't know whether this qualifies this kind of question or not.

Moreover, as you know, Board members serve staggered terms, and from time to time new members are appointed to

serve on the Board. Sometimes this makes a difference in the policy approach the Board takes, some basic proposition.

Mr. McDonough will remember the Collier case, for example. There was a sudden switch in position, and that case rose in this Region. So, I am wondering how we know, you know, what the current Board's position is on any one of these questions of policy. Agreed, it is as you gentlemen say it was, as you gentlemen say; but is it still that way today?

MR. MCDONALD: I might add, Your Honor, if Your Honor is impressed by the question or concerned about the question of the present Board's status, I would respectfully ask them rather than decide this case on a motion to dismiss that the evidence be taken and an opportunity for briefs be allowed for the parties to develop that point in much more detail. And, furthermore, what is the effect on the Board if a denial in the First Circuit of, let's say a denial in the First Circuit

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or the Fifth Circuit?

JUDGE FITZPATRICK: I am really just asking questions to try and get out collective knowledge out as to what the status of the law is today. It is difficult for the public where one aspect of the government is taking one tack, and another arm is taking another tack; which according to you is the situationhere.

You are urging me, I assume, you are urging me that I am bound by the particular tack taken by by arm of the government, the Labor Board. I don't doubt it, I am just trying to tie down as nearly as I can in technical terms what the state of Board Law is on the matter.

I am taking you gentlemen at your word as to what the status of the Board Law is, since I am not that much up on it,

frankly. I think I am bound by Board Law, and irrespective that circuits may have gone the other way.

I further note, that as Mr. McDonough pointed out, the circuit in which this particular matter arises has not spoken. In the circumstances, I think the Board itself would overrule me if I were to grant the motion to dismiss. Accordingly, I deny the motion, as I think I am bound by Board Law.

MR. COVEN: At this point, Your Honor, it is 20 of 1, I have two witnesses who will be brief witnesses, one of whom is going to be my first witness, and is available on a telephone call. May I suggest we recess at this point for lunch;

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come back in about an hour; and I will have my witnesses prepared to go at that point?

JUDGE FITZPATRICK: All right.

We will be in recess for one hour.

(Whereupon, at 12:45 p.m., the hearing in the above-entitled matter was recessed, to reconvene at 1:45 p.m., the same day in the same place.)

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AFTERNOON SESSION

1:45p.m

JUDGE FITZPATRICK: The hearing will be in order.

MR. COVEN: Mr. Reardon, please.

Whereupon,

THOMAS M. REARDON

was called upon as a witness, by and on behalf of the Respondent, and having been first duly sworn, was examined and testified as follows:

JUDGE FITZPATRICK: Be seated and give your name and address to the Reporter.

THE WITNESS: My name is Thomas M. Reardon, I am with the Law Firm of Warner & Stackpole, 28 State Street, Boston; and my home address is 134 Morse Road, Sudbury, Mass.

DIRECT EXAMINATION

Q. (By Mr. Coven) Mr. Reardon, you have identified yourself as a member of the law firm of Warner & Stackpole, is that correct?

A. That's correct.

Q. You are an attorney admitted to practice inthe State of Massachusetts?

A. Yes, I am.

Q. There has been some testimony that you and Mr. Walsh represented the Employer's Group in these negotiations with Teamsters Local 25 in the last negotiations for collective

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bargaining agreement, is that correct?

A. That's correct.

Q. And by stipulation, the parties have agreed that those negotiations started on March 14th or the first meeting was held on March 14 of 1975, and the last meeting was on April 13th of 1976; at which time final agreement was reached on the contract. Is that correct, sir?

A. That's correct.

Q. And you and Mr. Walsh represented the Employer's Group at all those meetings?

A. That's correct.

Q. Now, referring to the first meeting after Mr. Bonanno's withdrawal—withdraw that.

You are familiar with the—with Mr. Bonanno's withdrawal or the Bonanno Linen Service Company withdrawal from the Employer's Group which took place on or about November 25 of 1975?

A. Yes, I am.
Q. And when was the—withdrawl that.

And you are familiar with the fact that a letter dated November 24th, 1975, a copy of which I show you and which is marked Joint Exhibit 5 attached to the stipulation; Mr. Walsh offered to me an attempt to settle the terms of the contract, is that correct? That is after Mr. Bonanno's withdrawal?

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A. Right on behalf of the member committee's remaining or companies.
Q. And of course the letter speaks for itself, your Honro, I won't attempt to go into the letter.

Now, when was the first meeting held after that November 24, 1975, letter?
A. It was on December 1, 1975, the 19th meeting.
Q. Was there any discussion at that meeting with respect to the fact that Bonanno had withdrawn from theEmployer's Group?
A. Mr. McCarthy indicated to those present that the Union had received our letter of November 24th I believe the date was, the letter you just showed me?
Q. Yes.
A. And indicated that the letter had said Bonanno had withdrawn from the group and also mentioned as I recall that the rest of the Company's had brought their men back from lockout.

Mr. McCarthy then stated or asked Mr. Walsh who, as you mentioned, representing the Employer's Group from our side, who had replaced Mr. Bonanno in the negotiating committee; and Mr. Walsh replied Alan Shapiro. And, then, Mr. McCarthy asked when we were willing to meet with them when our committee was willing to meet with them and Mr. Walsh indicated, as we had in the past, that he, myself and Mr. Rayner would

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continue to meet and represent the member companies who were left.

Q. And, at that meeting, did the Employer's Group change its position in any way from the position it had taken in the last prior meeting?

A. No, we did not.

Q. When was the next meeting held?

A. The next meeting, the 20th, was held on February 4, 1976.

Q. And, again, was there any discussion about Bonanno at that meeting?

A. There was no discussion of Bonanno at that meeting.

Q. Did the Company's change their position in any way at that meeting?

A. No, they did not.

Q. When was the following meeting?

A. the following meeting was on April 5th, 1976, the 21st meeting.

Q. Was there any discussion about Bonanno at that time?

A. No, there was not.

Q. Did the Company change their position in any way?

A. Yes. The companies on April 5th, made a substantial change in proposal with respect to rates, and the like.

Q. Now, was there any agreement reached on April 5th?

A. No, there was not.

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Q. When was the following meeting?

A. ON April 13th, 1976, the 22nd and final meeting.

Q. Was there any discussion concerning Bonanno at that time?

A. Yes, there was.

We had some discussions specifically relating to the litigation that was pending at that time. There was an antitrust suit which had been filed by Local 25, and there was a temporary—injunction suit filed by the companies as well as some workmen's comp cases that had been filed.

The discussion—and let me refer to my notes, if it would be more helpful—I will.

First of all, the Union had indicated to Commissioner McDermott prior to the meeting that they were willing to withdraw their demands for commissions and they were willing to talk about an offer which was on a rate basis.

Q. Commissioner McDermott being who?

A. Commissioner McDermott being a representative from the Federal Mediations and Conciliation Service.

So, when Mr. Salter came in, he was asked by Commissioner McDermott if in fact commissions were still in issue, and Mr. Salter responded it is our intention with a counter proposal that the commission issue is dead. If we have agreement we have a contract.

Then Mr. Walsh said, what about the pending litigation?

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Mr. Salter responded we would probably wash all the pending litigation—this does not include Bonanno, they are separate now and not in the group. Mr. Walsh responded, I understand; because we no longer represent Bonanno. Warner & Stackpole Does represent Bonanno in the antitrust and their injunction suit. Incidently, that is incorrect. We no longer represent them in that suit, because Lepie & Coven made an appearance at that point. Mr. Walsh went ahead and said, however anything we do here doesn't relate to Bonanno. There are two pieces of litigation, one involves the injunction and the other involves antitrust; we have filed a motion to dismiss in the antitrust case; and unemployment cases we are

only involved incidently. The Board of REview is involved now, whether we are in it or not.

Companies unemployment accounts will be charged, the State will pursue the action in any event. Mr. Lyden responded at that time understood you have no control over—insofar as the Board of REview will pursue it. Mr. Lyden was also present for the Union at that time. I believe he is vicePresident of Local 25.

MR. COVEN: I have no further questions.

MR. MCDONOUGH: One minute.

CROSS EXAMINATION

Q. (By Mr. McDonough) Mr. Reardon, I believe you testified at the last meeting, the 22nd meeting, you read it rather

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rapidly, but there was talk about, some talk at the last meeting about the antitrust suit, temporary restraining order, pending workmen's compensation, pending, these are three different pieces of litigation? They were pending at the time?

A. Unemployment comp cases, not workmen's comp.

Q. Okay.

And all of that litigation you said—did that involve the whole group or just Bonanno or who?

A. The antitrust suit was filed by Local 25, it was filed against the whole group as I recall. We represented everybody in that suit. It was filed, as I recall, before Bonanno withdrew from the group. The temporary restraining order and the injunction suit; we represented the whole group up to the point when Mr. Bonanno withdrew. Because we filed it before he withdrew.

I believe on December 1, I am not sure, or shortly before then, Lepie & Coven entered an appearance. In any event, they did enter an appearance at some point in time, and that

is why I say, I don't know whether this is correct in saying that we represented Bonanno in that suit.

In the unemployment comp cases, it involved all the individuals who had filed for unemployment compensation, and I forget how many, there may have been 70 cases or so. And they were consolidated and Warner & Stackpole represented the

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entire group on that. Again, those cases were before Bonanno had left I believe.

Q. But this is all litigation regarding the group that didn't have direct impact on the contract negotiations, is that true? In other words—prior litigation, not directly involved?

A. Collateral litigation.

Q. And as part of the consideration for the contract, all of these matters were withdrawn, is that what you said?

A. Not as part of the consideration of the contract, we were very concerned as to—Mr. Walsh and myself, that this not be put up as part of the considerations. We simply asked the question what about the litigation.

At that point in time Mr. Salter responded, as I have stated, that he expected the litigation to be washed out.

Q. All right.

Now, did I understand you correctly when you said that Mr. Walsh said anything that we do here does not involve Bonanno?

A. That's correct. Does not relate to Bonanno, right.

Q. What was meant by that, when you say anything we do here, you were discussing collateral litigation?

A. We were discussing collateral litigation; but if you recall the conversation began with a discussion of commissions and whether we could settle this contract. So it meant not

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only the contract issues with respect to what our Group is going to do, but also the collateral litigation in which Warner & Stackpole and the Group was involved.

Q. That was said by Mr. Walsh?

A. That's right.

Q. Who is a member of your firm?

A. That's correct.

Q. Who is also representing the Employer's Group?

A. That's correct. He was the senior spokesmen for the group, let's say.

Q. All right.

Thank you.

Q. (By Mr. McDonald) May I see the notes that you used for purposes of examination?

A. Certainly if you can read my writing.

MR. MCDONALD: May I have just one minute, Your Honor.

JUDGE FITZPATRICK: Yes.

(Pause.)

Q. (By Mr. McDonald) Mr. REardon, as I review your notes it appears to me this statement you have attributed to Mr. Salter with respect to the inclusion of Bonanno was in response to a question by Mr. Walsh, "what about pending litigation?", is that correct?

A. I believe that is correct; yes.

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Q. So that when you stated Mr. Salter said, Mr. Bonanno is separate. Mr. Salter was referring to the resolution of the litigation that was pending—

MR. COVEN: I object.

Litigation speaks for itself.

JUDGE FITZPATRICK: He is not just talking about his notes. He is talking about his testimony as to what happened at the event. He can inquire about it.

Overruled.

MR. COVEN: Object to the form of the question. He is asking for his conclusion as to what Mr. Salter meant. I think YOur Honor should make that determination, not Mr. Reardon.

MR. MCDONALD: Withdraw the question.

Q. (By Mr. McDonald) Mr. Reardon, Mr. Salter's statement if your recollection is consistent with the notes, is it not, was in specific response to a question by Mr. WAlsh with respect to pending litigation?

A. That's correct.

Q. And you are aware that Mr. Bonanno is represented by separate counsel, is that correct?

A. At the present time, yes.

Q. And you were also aware at the time, were you not, that Local 25 had filed a charge in this case against Bonanno?

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A. No, I was not, as a matter of fact. As I recall it was filed on a Friday, and I forgotten what date this was, but I didn't hear about this until afterwards.

Q. Moving back to your testimony, with respect to the first meeting after Bonanno's withdrawal, you indicated there had been no change in the position. Isn't it true that prior to Bonanno—shortly before Bonannos' withdrawal there had been considerable discussion with respect to a change in this bargaining strategy by members of the Employer's Group—

MR. COVEN: I object to any questions about what was taking place before the meeting. The question is: what did the Employer's Group take, not what discussions preceded their position or their statement of position.

JUDGE FITZPATRICK: Are you arguing that it is beyond the scope of direct?

MR. COVEN: That, among other things.

First on the question of materiality—it goes beyond the scope of direct. And, second, that it is irrelevant in that it doesn't matter what discussions the parties—the various members of the Employer's Group had among themselves before the meetings. The question is what position did they take at the meeting.

JUDGE FITZPATRICK: I sustain the objection, only on the grounds that it is beyond the scope of direct.

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Do you wish to be heard?

MR. MCDONALD: Yes, Your Honor, I do.

It appears to me that counsel has offered the testimony for a number of reasons, one of which to presumably rebutt the testimony that was offered through my witness this morning, a change in strategy had presumed to have been agreed upon. The testimony was that no change in fact occured; therefore I don't think it is beyond the scope of the direct examination, to that extent, Your Honor.

I think I am entitled to inquire since the evidence is being offered and certainly will be argued to rebutt in the inferences that was present in the testimony I offered; I should be allowed to inquire in these areas, since this is the first meeting after the purported withdrawal.

JUDGE FITZPATRICK: I don't understand the direct testimony of the witness to relate to the point you were making this morning.

MR. MCDONALD: The testimony was, Your Honor, that there was no change in the Employer's Group position. Counsel will argue that this rebutts any inference that the

testimony this morning may have raised, that in fact a change was contemplated and caused the withdrawal of Bonanno.

JUDGE FITZPATRICK: I will reverse my ruling—

MR. COVEN: Excuse me, may I be heard?

The question we heard argued this morning was not

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whether or not the parties had discussed a change in policy or whether this in fact caused Bonanno's withdrawal. The question was with respect to Mr. McDonald's position that the impasse had been broken. And, that is the only question—the only issue which you, Your Honor, allowed the testimony. Only with respect to his intention that the impasse had been broken on prior to or about November 21st and this question doesn't go to it at all. In fact, the testimony shows clearly that the impasse had not been broken, and wasn't broken until April the 13th.

JUDGE FITZPATRICK: I adhere by my latest ruling, and I will allow the question.

Q. (By Mr. McDonald) Directing your attention to this discussion amongst the Employer's Group prior to the purported withdrawal of Bonanno, which as I understand it, I understand there were no meetings between those discussions and the December 1st meeting.

Directing your attention to the period before November 21st, isn't it true that members of the Employer's Group were discussing a change in the strategy that they had employed prior to that time?

A. Mr. McDonald, I am afraid you have got me in a bind here. I don't know what the ethical rules are in connection with this kind of testimony; but it seems to me that without the release or without the acquiesence of our clients, I

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can't testify as to this testimony since it was directly within the attorney-client privilege as far as I am concerned. I hadn't anticipated your question, and so I didn't try to get any kind of authorization. I would be glad to do so, but until I do I can't see answering the question.

MR. MCDONALD: It would seem to me, Your Honor, that the privilege has been waived by the witness coming forth and testifying to the extent he has.

JUDGE FITZPATRICK: It seems to me it has been too.

It has certainly been waived by Bonanno, if you recall you testified you were dealing with the bargaining situation. You have been called to testify with respect to your participation in the bargaining issue here.

It does not directly relate to any liability on the part of any members other than Bonanno; so I cannot see how it would prejudice your other clients in that regard. Accordingly I think there isn't any issue of privilege at this point at least.

Now, you will have to do what your conscience—

MR. COVEN: Your Honor, if I may be heard for one moment.

JUDGE FITZPATRICK: Just a minute, let me finish my instruction to the witness.

I think you are to do what your conscience dictates, but my instruction would be for you to answer the question.

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Mr. Coven?

MR. COVEN: If I may be heard for one moment, Your Honor.

As far as the privilege being waived by Mr. reardon appearing here and Bonanno calling him, we didn't call him and we

didn't ask him any questions at all, and he didn't offer any testimony as to any discussion that went on within the group. These confidential discussions within the group—

JUDGE FITZPATRICK: You asked if the position had changed.

MR. COVEN: Only the position which was took at the meeting. It was no longer confidential, not at the bargaining meetings. We asked him about the bargaining meetings. We didn't ask about any discussions within the group. It has been our position consistently, of course, that any discussions within the bargaining group were irrelevant, and were not material to this proceeding. So, we didn't ask him that, and may I respectfully urge that either—neither Mr. Reardon or Mr. Bonanno waived that attorney-client privilege with respect to these confidential discussions within the framework of the Employer's Group.

JUDGE FITZPATRICK: Thank you.

I will adhere to my ruling.

THE WITNESS: I wanted to make two comments. The first has already been stated by Mr. Coven. And, the second is I disagree with you, Your Honor, with respect to the

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question of whether or not there could be prejudice.

In a hypothetical situation, not this situation let me make that clear, there could be any kind of an unfair labor practice charge eminating from what kind of internal discussions were had. And, so, I am afraid I must respectfully decline to answer without authorization.

JUDGE FITZPATRICK: Counsel can carry it from there.

Q. (By mr. McDonald) It is my understanding then you are refusing to answer any questions with respect to conversations concerning Employer Group strategy that occured prior to the November 21st, 1975—

A. Or after for that matter, yes.

MR. MCDONALD: Your Honor, in view of the witness's testimony, I would request a brief recess to allow him the opportunity to obtain a waiver from his client for purposes of offering testimony rather than having to move to strike testimony.

Again, I think we should allow him that courtesy, as it is my understanding if he did get a waiver he would testify.

THE WITNESS: That's right.

JUDGE FITZPATRICK: What sort of a recess are you suggesting?

MR. MCDONALD: I would simply offer him an opportunity to mke a phone call to the director of the Employer's Group to ascertain whether or not in fact a waiver would be available.

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JUDGE FITZPATRICK: I understand, but how much time are you asking?

MR. MCDONALD: Five minutes, to ten minutes?

JUDGE FITZPATRICK: We will be in recess for ten minutes.

(A short recess was taken.)

JUDGE FITZPATRICK: The hearing will be in order.

THE WITNESS: Your Honor, if I can report back to you, I have talked to the individuals concerned, three of them gave me their permission to speak, but the fourth one denied permission pending a conference, a telephone conference with his president, Richard Senior, in Chicago. He thinks he can get back to me this afternoon, but I am not sure, or he is not sure. And, until I get that, I am afraid I will have to decline.

JUDGE FITZPATRICK: What is your suggestion, Mr. McDonald?

MR. MCDONALD: I will not move to strike the testimony of this witness; but I would simply ask if in fact the position remains the same that the reasonable inferences be drawn from the refusal to answer the questions. I would be willing to proceed with the hearing, proceed with the other witnesses. And, if counsel hears from his principal prior to the close of this hearing, then to bring him back if he will consent to answer the questions, examine him at that time.

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MR. COVEN: Your Honor, I may say this, this is going to be my only witness. I thought I would have to call another witness, but in light of what was illicited from General Counsel and the Union's witnesses, I find it unnecessary to call the other witness. So, Mr. Reardon will be my only witness.

JUDGE FITZPATRICK: Mr. Reardon, how long do you think it would be before you hear?

THE WITNESS: It all depends on whether the chief man, the president is available; and this individual was going to call immediately and see if he could get ahold of him, and get back to me as soon as he could. He expected to get back before the afternoon was through.

JUDGE FITZPATRICK: What does that mean? Are you talking about 5 o'clock?

THE WITNESS: I would hope so, but I can't give you any guarantees.

JUDGE FITZPATRICK: My feeling is we should continue with our examination of this witness to the extent that we can, and if we have not then heard, if he hasn't then heard; I will grant a short recess. But, in any event, it doesn't seem to be a matter that I should grant a lengthy recess about.

I think my idea would be, I would simply take the record as is, and draw such appropriate inferences as I think

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are warranted, based upon the record as made, and wind the hearing up.

MR. MCDONALD: Thank you, Your Honor.

I have no further questions of this witness.

JUDGE FITZPATRICK: Do you have any further questions?

MR. MCDONOUGH: I have no further questions.

JUDGE FITZPATRICK: Mr. Coven?

MR. COVEN: I have one or two further questions.

REDIRECT EXAMINATION

Q. (By Mr. Coven) I looked at your notes a little while ago, and your notes indicate whether or not you and Mr. Walsh or other members of your committee have any conversations with Commissioner McDermott, Federal Commissioner McDermott before you had a general session with the Union representatives, Mr. Salter and Mr. Lyden?

A. This is on the April 13th the last meeting?

Q. Yes.

A. Yes, they do.

Q. Can you tell us what that conversation was you had with Commissioner McDermott at that time?

MR. MCDONALD: I would object to at this point, to any conversation between this witness and Commissioner McDermott as Commissioner McDermott is not present in the room and not available for cross examination on the issue involved.

JUDGE FITZPATRICK: Who is Mr. McDermott?

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MR. COVEN: He is the Federal Mediator.

JUDGE FITZPATRICK: Objection overruled.

THE WITNESS: Well, as background on the previous

meeting on April 5th, we made a proposal, the Company's made a proposal to the Union, and the sum and substance of this was, the Union's response was that they would have to study it. During the course of the week, before the last meeting, the 22nd meeting on April 13th, the Union got back to Commissioner McDermott directly. We had written up our proposal in a 20 page document or so; and they had gotten back to Commissioner McDermott with several changes on that document, which was in effect their counter proposal.

Just prior to the meeting with the Union, while we were all there, but Commissioner McDermott was with us separately, Commissioner McDermott stated, what do you think of the Union's counter proposal? And Mr. Walsh responded, we want to know if commissions are out? McDermott: Let me raise that with them. Walsh: what about litigation? Anything said what happens to it? McDermott: Said nothing yet. Walsh: We of course can't speak for Bonanno, on language there is a lot of give, transfers—that refers to a provision with respect to transfer in both our proposals—as the last statement.

MR. COVEN: I have no further questions.

JUDGE FITZPATRICK: What was the date of this?

THE WITNESS: April 13, 1976.

JUDGE FITZPATRICK: These notes you have been referring to, when did you make the notes?

THE WITNESS: When did I make the notes?

JUDGE FITZPATRICK: When?

THE WITNESS: At the time of the meeting.

JUDGE FITZPATRICK: What function did you perform at that meeting?

THE WITNESS: Mr. Walsh, he was the principal spokesmen for the group, for the negotiating committee; and I in effect was the scribe. I transcribed minutes of the meetings, which I have for the entire 22 meetings.

JUDGE FITZPATRICK: So there was a management committee and a union committee, correct?

THE WITNESS: Yes.

JUDGE FITZPATRICK: Do you know whether there was similar notes made by your counterpart, across the table?

THE WITNESS: I am not sure if there were at that meeting. I think there probably were from time to time.

JUDGE FITZPATRICK: You mentioned McCarthy, who is McCarthy?

THE WITNESS: Mr. McCarthy is, I believe, the president of Local 25. He was a representative along with Mr. Salter for a number of meetings. The Union committee changed from time to time. In the beginning the first 10 or 12 meetings

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or so Mr. Salter was the principal Union representative, along with three individuals from the various company, drivers; and they were staggered. One would come in with Mr. Salter one day and then the next another day.

Then, at a later point in time with the Federal Mediation Conciliation Service got involved, I believe, a man by the name of Johnson, Ken Johnson accompanied Mr. Salter. And, then Mr. Johnson, as I recall was taken ill and Mr. McCarthy and Mr. Salter negotiated for several meetings; and then the last meetings and I think maybe the last two meetings Mr. Lyden who is the vice president of Local 25 and Mr. Salter were the Union representatives.

JUDGE FITZPATRICK: What is McCarthy's first name?

THE WITNESS: William.

JUDGE FITZPATRICK: Acting as a scribe, were you acting only for your clients or also for other negotiators in the room?

THE WITNESS: You mean negotiators for the Union?

JUDGE FITZPATRICK: Yes.

THE WITNESS: No, I was acting only on behalf of the Company.

JUDGE FITZPATRICK: Any more questions of this witness, Mr. Coven?

MR. COVEN: No, YOur Honor.

JUDGE FITZPATRICK: Mr. McDonough?

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MR. MCDONOUGH: No, I don't, I defer to Mr. McDonald.

RECROSS EXAMINATION

Q. (By Mr. McDonald) A point of clarification, when Mr. McDermott made these statements that you referred to, were you separated?

A. Yes.

Q. That is to say, you or he was with the management committee?

A. Yes.

Q. And there were no union representatives present?

A. That's right.

MR. COVEN: May I?

FURTHER REDIRECT EXAMINATION

Q. (By Mr. Coven) After your completion of discussions with Mr. McDermott that you just testified, was there a joint session with the management and representatives of the Union?

A. That's correct.

Q. And Mr. McDermott was also present?

A. That's correct.

Q. It was during that joint session that Mr. Salter testified, as you testified earlier, to the effect that this does not include Bonanno, they are separate and not in the group?

A. That's correct.

MR. COVEN: I have no further questions.

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JUDGE FITZPATRICK: Any further questions?

MR. MCDONOUGH: I have nothing further.

MR. MCDONALD: Nothing further.

I do have two rebuttal witnesses I will be calling. I am prepared to go forward with those, if its acceptable to you?

JUDGE FITZPATRICK: Can you remain available?

THE WITNESS: Yes, Your Honor.

JUDGE FITZPATRICK: All right, fine.

I think we will move on then to the Union's witnesses. Please step down, thank you.

(Witness excused.)

JUDGE FITZPATRICK: You have no further witnesses to call?

MR. COVEN: No, sir.

JUDGE FITZPATRICK: Does General Counsel have any rebuttal?

MR. MCDONOUGH: General Counsel has no rebuttal.

MR. MCDONALD: I would like to call Mr. Salter. Whereupon,

HERBERT T. SALTER

was recalled as a witness, by and on behalf of the Charging Party and, having been previously sworn, was examined further and testified as follows:

JUDGE FITZPATRICK: Proceed.

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DIRECT EXAMINATION

Q. (By Mr. McDonald) Mr. Salter, there has been some testimony today with respect to a conversation between yourself and Louis Katz last Friday with respect to a change in

bargaining strategy prior to attempted withdrawal of Bonanno. WEre you in the courtroom this morning when the testimony was given by Mr. Katz?

A. Yes, I was.

Q. Could you explain, please, to the best of your recollection the substance of that conversation?

MR. COVEN: I object. It is apparently, he is apparently trying to impeach the testimony of his own witness.

Mr. Katz was his witness. Mr. Katz testified as to certain conversations he had with Mr. Salter; and he also testified as to certain conversations that he had with Mr. Bonanno. Now, what conversations he had with Mr. Salter or his testimony, or Mr. McDonald is stuck with Katz's testimony as to what he told Salter. And, if Salter is going to try to change that testimony, Mr. McDonald is attempting to impeach the testimony of his own witness, or the credibility of his own witness.

I object to any testimony by Mr. Salter to any conversations he had with Mr. Katz. Mr. Katz is not a party to this case, his testimony is not binding on the Respondent here. The only purpose of this testimony is to impeach his witness.

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He is Mr. McDonald's witness.

JUDGE FITZPATRICK: Counsel?

MR. MCDONALD: First of all I don't think there is any rationale for concluding we are trying to impeach anyone's testimony, because the witness hasn't testified yet.

The witness will in my mind corroborate the testimony of the other witness, and fill in gaps where the gaps are missing in the other witness's testimony, in the interest of building a full and fair record upon which the decision of this case can rest.

JUDGE FITZPATRICK: Is that—if that is your purpose—

MR. MCDONALD: It is also, Your Honor, there was testimony given with respect to change or failure to change in a position by the Respondent in this case on his direct case; and I feel I have an opportunity again to rebutt that, as I attempted to do with Mr. Reardon to bring in any evidence I may have with respect to the shift in the position.

JUDGE FITZPATRICK: Now that is another point.

What were you going to say, Counsel?

MR. COVEN: I was going to say that any testimony as to the conversation between Katz and Salter is not admissible evidence as to any so-called changes in the position.

Now if Katz told Salter something strictly between Katz and Salter. I don't know what Katz said, and Katz might have told him any number of things. But, that is if he testifies that Katz said something or other, that is hearsay.

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Because that is not direct testimony as to what happened or what Bonanno said or what members of the committee said. If that is the purpose, this is not admissible evidence or proper evidence of any so-calld change of position or discussions of change of position.

JUDGE FITZPATRICK: You are raising afurther objection based on hearsay?

MR. COVEN: Yes, sir.

JUDGE FITZPATRICK: I think it is well taken. I think the prior objection is well taken. I will sustain the objection on that grounds.

I am not excluding you from examining the witness on any matter that is proper rebuttal; but I don't see the conversations last Friday, his conversation as dealing with that frankly. If there was evidence that this witness could give that is admissible testimony that bears on the issues involved; it

would have been proper at the earlier stage of this proceeding. It wouldn't be proper now unless you can show me it is proper rebuttal somehow or other, and something that shouldn't have been brought up before.

MR. MCDONALD: I would think it is proper rebuttal, Your Honor, because for the first time in his direct examination counsel has raised the issue of change in an effort to rebutt our direct case, in that we had suggested there was an eminent change. He has prooferred evidence, or at least an intent to

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change; he has shown no there was no change in the inference that arises is that there was therefore no intent to change. I think since that was raised by the Respondent, I have then the right to go into it again in the rebuttal case.

JUDGE FITZPATRICK: Again, you said?

MR. MCDONALD: Further, more fully.

JUDGE FITZPATRICK: I am not keeping you from going into any rebuttal. I don't want to retry matters that are already tried, that is all.

MR. MCDONALD: Is it my undersatnding you are not allowing me to inquire about the conversation with Mr. Katz sofar as it bears—

JUDGE FITZPATRICK: Ask a question. I cannot see whereby it can possibly relate to anything that you didn't already have an opportunity to go into in your case in chief.

Q. (By Mr. McDonald) My question to Mr. SAlter would be to relate his conversation he had with Mr. Katz on last Friday?

MR. COVEN: And, I objected to that.

JUDGE FITZPATRICK: I will sustain the objection.

MR. MCDONALD: I have no further questions.

MR. COVEN: I have no further questions.

JUDGE FITZPATRICK: Thank you, you may step down.

(Witness excused.)

JUDGE FITZPATRICK: Anything else?

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Whereupon,

ARTHUR SPILIOS

was called as a witness, by and on behalf of the Charging Party, and having been first duly sworn, was examined and testified as follows:

JUDGE FITZPATRICK: Please be seated and give your name and address to the Reporter and spell your last name.

THE WITNESS: My name is Arthur Spilios, S-p-i-l-i-os, I live at 3 Doppingbrook Road, Sherburn, Massachusetts.

DIRECT EXAMINATION

Q. (By Mr. McDonald) Mr. Spilios, you are here as a result of a subpoena issued by the National Labor Relations Board at my request?

A. Yes, I am.

Q. You were not here when the hearing commenced this morning, but arrived at some subsequent time?

A. I was here before the meeting started.

Q. You were here before the meeting started?

A. I was told the meeting hadn't started yet when I walked in the door.

Q. What time did you get here?

A. Quarter of 12, I am not sure.

Q. What is your occupation, Mr. spilios?

A. I am president of Royal Crown Linen Service.

Q. That is one of the Linen Company's in the Employer's

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Group that is the subject of this hearing?

A. That's correct.

Q. And in your capacity as president, are you responsible for labor relations with the Company?

A. That is correct.

Q. And have you participated in those collective bargaining decisions that the Company has made with respect to Local 25 in the course of the past year or so?
A. That is correct.
Q. And you are aware that on or about November 21st, of 1975, the Bonanno Company attempted to withdraw and sent notifications of a withdrawal to the Employer's Group?
A. I am not sure about the date, but it was in November; yes.
Q. Do you recall that it was shortly before Thanksgiving?
A. Yes.
Q. And at the time that this happened, your company had locked out the employees represented by Local 25, is that correct?
A. At the time this had happened?
Q. Yes.
A. Prior to that we were locked out.
Q. From June until—
A. Un-huh.
Q. —sometime in November, November 25th or 26th?

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A. That's right.
Q. And there were negotiationsongoing between the Employer's Group and Local 25 during that same period?
A. That's correct.
Q. And shortly before Mr.—the Bonanno Company purportedly withdrew, could you tell us what change in strategy if any was discussed by the Employer Group?
MR. COVEN: I object.
JUDGE FITZPATRICK: Overruled.
You may answer.
THE WITNESS: Our basic strategy, I have to talk about

the basic strategy as I remember it from the time the negotiations started was to resist the commission and be moderate in our hourly rate offers. And that was our basic strategy.

Just before Bonanno withdrew, as I remember, we had a credibility problem in the group because two of the Company's had met with the Union secretly and there was some discussion at, I think the last meeting, even maybe the meeting prior to that. That maybe we should offer a sky high offer in money to try to settle the strike.

Q. (By Mr. McDonald) As opposed to the commission?

A. As opposed to the moderate offers here we had been giving, and as opposed to commission.

Q. Did Mr. Bonanno oppose that strategy?

A. It wasn't a strategy. These were certain members of the group were starting to talk about—along the lines of

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sky high offers and this was getting away from our original strategy, which was to give moderate fair increases in money; because Mr. McCarthy made it very clear to us that it had to be commission and nothing but commission would solve—would settle the strike.

Q. So your testimony that whatever you want to call it, concept, strategy, whatever; Mr. Bonanno opposed this new concept of a sky high wage offer?

A. I don't remember him opposing it—I don't remember what he said, but it was just—including myself—I felt that we were getting way away from the strategy and the next thing I knew it Bonanno had resigned.

Q. Is it your testimony that the resignation that—that the resignation was due to the talk of the sky high increase—

MR. COVEN: I object to his characterization of what the witness's testimony is. I think the witness' testimony speaks

for itself; and I object to Mr. McDonald's characterizing it, or to speculate on what caused Mr. Bonanno's withdrawal.

JUDGE FITZPATRICK: Overruled.

I don't look on it as characterization. I think counsel is simply trying to explore what actually happened in there.

You may answer.

MR. COVEN: He is asking him what his understanding of the reason is for Bonanno's withdrawal.

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JUDGE FITZPATRICK: It is subject to cross examination.

Q. (By Mr. McDonald) Do you recall during this n-on hour your telling me that that was the reason for Bonannos'—

MR. COVEN: I object.

What he told Mr. McDonald at noon time or any other time. That is hearsay or certainly a conversation held out of the context of the Respondent, and in no way binding on the Respondent.

JUDGE FITZPATRICK: Overruled.

THE WITNESS: What I told you is what I told you in the back of the room about ten minutes ago; that it was of my opinion that we had gotten off the line of the original strategy and that was to resist commission and be moderate in our wage increases or our offers; because the Union made it very clear that any offers in the way of hourly rate wouldn't mean anything that they had to have a commission settlement.

And, at the time of—in November, in that area of time, there was discussion by certain members of the Committee that maybe a good sky high offer would settle the strike.

Q. (By Mr. McDonald) Mr. Bonanno opposed this strategy?

A. It wasn't a strategy, it was a discusion. We hadn't agreed to do it.

JUDGE FITZPATRICK: What position did Bonanno take?

THE WITNESS: He was against it.

Q. (By Mr. McDonald) Shortly thereafter he withdrew?
A. It could have been right there at the time, I am not

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sure of the exact time. I think there were two meetings or three meetings all within three or four days.
Q. And the withdrawal, based on the intended circumstances would do to this new concept discussion about the high wage offer—

MR. COVEN: I object.

Again he is asking the witness to speculate.

JUDGE FITZPATRICK: Just a second, I will sustain the objection. I think it is leading the witness.

MR. MCDONALD: I have no further questions.

MR. MCDONOUGH: I have no questions.

CROSS EXAMINATION

Q. (By Mr. Coven) Mr. Spilios, you said that before Mr. Bonanno withdrew, there was a credibility problem because two companies had separate meetings with the Union?
A. That's right.
Q. And what were those two companies?
A. Morgan Linen and—Morgan Services, and Mr. Katz's company, Standard Services.
Q. And was there some discussion about the fact that Morgan and Standard had had these separate meetings with the Union?
A. Yes.
Q. Was there an attempt by Mr. Bonanno to get an assurance that this would not happen again in the future?
A. That's right.
Q. Did he get such an assurance?

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A. Yes.
Q. Did he get it from everybody in the group?
A. As far as I know he did; yes.
Q. This discussion about this so-called, about the advisibility of making a sky high offer, was Mr. Bonanno the only one who opposed making that sky high offer?
A. No.
Q. Did various other members of the group speak up against it?
A. Well, it was discussion you see. It was suggested. I don't know who suggested it, but it was discussion and things were bandied about. The thing that concerned—I can speak for myself, I don't know what was going on in Bonanno's mind, was the credibility and then all of a sudden these discusions coming up. And, the discussions getting away from the initial strategy that in my mind it was a fear that the strategy that certain members of the committee might change the strategy.
Q. In other words, that certain members of the committee might go off and make a separate deal with Local 25?
A. That's right, we just didn't know—
MR. MCDONALD: Objection.
That is not what the witness said, and counsel is putting words in his mouth.
JUDGE FITZPATRICK: Just a second, have you finished?
MR. MCDONALD: I believe the witness—the testimony

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will show that the fear was that other members would adopt other strategy of the offers—
JUDGE FITZPATRICK: Just a second, I am listening to counsel.

Now, continue.

MR. MCDONALD: And it appeared to me that the following question that was asked by Counsel dealt with another aspect and that was the meetings that were held separately away from the bargaining table.

MR. COVEN: That was proper—

JUDGE FITZPATRICK: Just a second, counsel.

Objection overruled.

Q. (By Mr. Coven) What was your answer, Mr. Spilios?

JUDGE FITZPATRICK: He gave his answer.

Q. (By Mr. Coven) In the course of this discussion about the possibility of this or the feasibility of making a so-called sky high offer, approximately how many members of the group indicated support and how many indicated opposition to such a proposal?

A. Once again it was discussions. Discussions as you are sitting around people, that credibility problem. People were discussing things; and even the people that may have discussed I don't know if they really wanted to do it or not. It was just the fact that it was brought up, was something to worry about, because it was breaking a line of what the initial

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strategy had been all along.

There was no sign from the Union that there was going to be a break in the commission, none whatsoever. And, we felt as a group that to give a substantial money offer to try to get the Union to talk away from commission was futile. That the Union had made it very clear to us that no matter what you offer we want commissions. So the group felt we would be building up a base, and we would be hurting ourselves if we gave a sky high offer and then all of a sudden sky high offers were mentioned at that particular time.

So, as I remember it, at that time Bonanno resigned—
Q. Bonanno resigned after these discussions, is that correct?
A. That's right.
Q. He wasn't the only one who indicated that he was opposed to making the sky high offer?
A. No, he wasn't.
Q. You yourself indicated you were opposed?
A. That's right.
Q. Did the group at that time make any change with respect to its offer or vote any change with respect to its offer?
A. As I remember when Bonanno resigned, of course that just changed the complexion of everything and I don't think anything got settled in that meeting. And the lockout was lifted soon after that; and we just went on. I don't think

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anything happened, we just went on.
Q. Well, before Bonanno resigned, there had been no vote or any agreement as to change in your offer to the Union, is that correct?
A. That's right.
Q. Did Bonanno ever tell you himself the reasons for his withdrawal?
A. Away from the group?
Q. Either away from the group or within the group?
A. I can't remember anything specific that he ever told me that the group hadn't heard.
Q. So that your testimony or whatever testimony may be on the record with respect to the reasons for the—or the purported reasons for Bonanno's withdrawal are only your speculation, is that correct?
A. That's right.

MR. COVEN: I have no further questions.

JUDGE FITZPATRICK: Any redirect?

MR. COVEN: Oh, I'm sorry, just one more.

Q. (By Mr. Coven) Were you present in the meeting of April 13th, 1976, when the final agreement upon the contract was made?

A. Yes.

Q. Do you remember any statement by any of the Union representatives with respect to the question as to whether or not

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Bonanno was involved in, or the question of Bonannos' involvement?

A. Yes.

Q. And will you tell us please, was this during the joint session between the Employer's representatives and the Union representatives?

A. That's right.

Q. And will you tell us please who said, who made the statement and what was said, as best you can remember?

A. Well, the best I can remember is the meeting went on, towards the end of the meeting it was just a clarification of what the management committee was offering. And, I can't remember whether it was Mr. Salter or Mr. Lyden said that now this doesn't have anything to do with Bonanno, that is the only thing that was said about Bonanno. And I think Mr. Reardon or Mr. Walsh said, that's right.

MR. COVEN: I have no further questions.

JUDGE FITZPATRICK: Mr. McDonald, any redirect?

REDIRECT EXAMINATION

Q. (By Mr. McDonald) Were you in the room for Mr. Reardon's testimony today?

A. Yes.

Q. You heard him testify that Mr. Salter's statements were with respect to concluding some kind of litigation that occured?

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MR. COVEN: I object to Mr. McDonald characterizing Mr. Reardon's testimony, I don't think it is proper. The testimony speaks for itself.

JUDGE FITZPATRICK: I agree it speaks for itself, but I think he is just calling attention to the subject matter. He is not testifying—

MR. COVEN: I have no objection to him calling attention to the subject matter without his characterizing or trying to interpret the testimony.

JUDGE FITZPATRICK: I don't view it that way. He has got to call it something.

Overruled.

You may answer.

THE WITNESS: Could you ask the question again, please?

Q. (By Mr. McDonald) Could you read the question back?

(The pending question was read by the Reporter as follows:

"Q. You heard him testify that Mr. Salter's statements were with respect to concluding some kind of litigation that occured?")

Q. (By Mr. McDonald) Do you recall his testimony?

A. I recall.

Q. Would you say it was accurate?

A. There was talk about the litigation between Salter and Lyden and our attorneys. I don't know exactly what it was.

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Q. Do you remember the question put to Mr. Salter immediately prior or to Mr. Lyden you testified that when they said to you—
A. I don't think what I was talking about had anything to do with the litigation.
Q. Do you recall the question—
MR. COVEN: May we ask the witness be permitted to finish?
JUDGE FITZPATRICK: I think the witness should be allowed to finish his sentence, what were you saying?
THE WITNESS: There was discussion about the litigation that as we were explaining the money in the package, I remember either Mr. Lyden or Mr. Salter making a statement that this doesn't have anything to do with Bonanno.
Q. (By Mr. McDonald) Do you recall the question or the statement that was put to them immediately prior to that statement?
A. Do I recall the meeting, no I don't.
Q. Now the final settlement that was arrived at between the Employer's Group and Local 25 included a noncommissioned wage package, is that correct?
A. That's correct.
Q. And was this final settlement significantly higher than the last wage offer that the Companies had made to Local 25?

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A. I am not familiar with the previous offer, but if you take the total monies of the retroactive, it was several hundreds of dollars involved and it was an awful lot of money.
Q. Did you recall that the Employer's Group increased its wage offer just prior to the acceptance of the Union package?

A. I don't recall it, but if you say that is what happened and the record shows it, I would agree. My memory just isn't that good.

MR. MCDONALD: I have no further questions.

JUDGE FITZPATRICK: Mr. McDonough?

MR. MCDONOUGH: I just have a couple, Your Honor.

Q. (By Mr. McDonough) Mr. Spilios, you said in your testimony that just before Bonanno withdrew that there was a credibility problem that arose, and that two of the companies tried to negotiate separately, and you named Morgan and Standard. Do you know who made the overtures to negotiate separately? By that I mean do you know whether those companies approached the Union or the Union approached the company?

A. I am not positive about it, I have always had the feeling that the companies approached the Union; but I have never asked myself the question.

Q. One more question.

Did anything come of those negotiations individually?

A. No.

MR. MCDONOUGH: Nothing further.

MR. COVEN: I have nothing further.

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JUDGE FITZPATRICK: You may step down, thank you.

(Witness excused.)

MR. MCDONALD: I have nothing further.

JUDGE FITZPATRICK: What do you now propose, Mr. McDonald?

We will go off the record.

(A short recess was taken.)

JUDGE FITZPATRICK: On the record.

I understand you have talked to Mr. Reardon, would you state for the record—

MR. COVEN: Mr. Reardon just called me back, to tell me that he had received a telephone call from the gentleman he had spoken to earlier who told him he had to contact his principal in Chicago before being able to give an answer on the question of waiver or privilege; and he told me that this gentleman had advised he had not yet been able to reach his principal in Chicago and didn't know when he would be able to reach him. And, furthermore, that his recommendation to his principal would be that the principal should not waive the privilege. That's all I can tell you at this point.

JUDGE FITZPATRICK: Mr. McDonald, what is your pleasure?

MR. MCDONALD: I would simply state, Your Honor, that I would concur with the course of action outlined by Your Honor previously, concerning this. That in the event Mr. Reardon was unable to make contact by the time the rest of the testimony

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was closed, and in view of counsel's representations that in any event Mr. Reardon's advice would—

MR. COVEN: Not Mr. Reardon's advice, the other gentleman's advice. No, Mr. Band's advice to his principal would be that his principal should not waive it.

MR. MCDONALD: In view of that representation, I don't think it would behoove us to keep the record open.

JUDGE FITZPATRICK: All right.

I gather then that concludes the evidence?

MR. COVEN: May I have a few minutes to confer with Mr. Bonanno as to whether or not we may want to offer any testimony in response to the testimony of the last witness?

JUDGE FITZPATRICK: Surely.

We will go off the record for a few minutes.

(A short recess was taken.)

JUDGE FITZPATRICK: On the record.

MR. COVEN: If Your Honor please the Respondent has no further testimony, at this time; and we feel the record is complete without adding anything further. There is nothing we might offer by way of testimony that I think could add to the material part of the record; therefore we will rest at this time.

JUDGE FITZPATRICK: Thank you.

That concludes the testimony.

Mr. McDonough, do you wish to make a closing statement?

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MR. MCDONOUGH: I prefer to reserve that for briefs, Your Honor.

JUDGE FITZPATRICK: Mr. McDonald?

MR. MCDONALD: I will submit a brief.

MR. COVEN: I would like to make a closing statement. I won't repeat everything I said before, because we are standing on that position, but the second part of our position deals with this question as to the Union's consent or assent as to whether or not the Union should be permitted to object to or to take the position at this late stage that Bonanno should be held liable on the contract. And, again, without repeating anything with respect to the impasse question; I want to refer only to what happened after the withdrawal.

We have the withdrawal on November the 21st, according to the stipulation and the testimony. Mr. Bonanno gave a copy of this withdrawal letter to the Employer's Group, and then left the meeting of the Group on the 21st. On the same day he attempted to deliver a copy of the letter to Mr. Salter at the Union; and was unable to reach him and left word to call him back. And Salter's testimony was he called Bonanno back and Bonanno read to him the letter, and Salter said

what his testimony—we will wait until we get a copy. He asked if Bonanno was going to send him a copy, he said he would, and Salter said, well we will take it up with our attorney's after we get a copy or words to that effect.

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He testified he received the letter I think on the 24th of November, which was the following Monday, which makes sense—despite our postal systems.

Now, I want to point out also that on November the 24th, Mr. Walsh of the Employer's Group counsel wrote to the Union telling them, we understand that Bonanno has withdrawn and goes on then to say that we are terminating the lockout and so on. And, I say, this, that if at that time the Union had any objection to Bonanno withdrawing, they should have spoken up at least—well certainly by that time. Because the lockout was terminated strictly on the basis that Bonanno had withdrawn from the group.

If the Union was contending or made an contention at all that Bonanno had improperly withdrawn from the Group and was going to be bound; they should have spoken up; instead they waited. They reaped the benefits of Bonanno's withdrawal and now they come around and they want to say, well Bonanno is responsible.

But, even if they had done that a week later, I—but they didn't do it a week later. They did it only approximately five months later. During the intervening period of time, five months, there were various meetings starting I think with December the 1st. The Union at that time, Mr. McCarthy, the president of the Union who is the chief spokesmen at that particular meeting said something along the lines, well we

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understand that Bonanno or we have been notified Bonanno is no longer a member of the Group or words to that effect. And the Employer's representative said that's correct; and then they went on negotiating.

McCarthy or nobody else at that time said wait a while, we are going to hold Bonanno responsible. Again, they have another meeting, they had several other meetings, until finally came April the 13th, this is four—four and a half months after Bonanno's withdrawal. And, at that point—and may I say certainly—that there was no—the impasse had continued until apparently April 5th or April the 13th on those commissions. April 5th or April 13th, according to Mr. Spilios, they had changed their offer on April the 5th, and contingent upon the Union's changing their position on the commission; and the union indicated on April 13th, indicated they were willing to drop the commissions and they went back in. And, again, before they agreed to anything there was discussion where does this leave Bonanno? And testimony is that they said Bonanno isn't part of the group, he is separate, he isn't covered by this.

Of course, there is testimony by Mr. Reardon that this came after some discussion of litigation; but the fact is that they said Bonanno isn't part of this. And, certainly if they contended that Bonanno was part of it, they should have spoken up.

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Now, Bonanno is prejudiced if they had taken the position way back Last November that Bonanno had no right to withdraw. Bonanno might very well have gone back to the group and said, okay if they say I have no right to withdraw then I

am going to stay with the Group and withdraw my withdrawal and stay with the group. The Group at that time might then have said that if Bonanno is part of the Group, we won't terminate our lockout or we will reinstitute our lockout if they had already terminated it. There were all sorts of things that might have happened, if the Union had made its position clear at that time. And, certainly I say it is clear from the testimony that this was only an afterthought.

What they wanted to do was get the benefit of Bonanno's withdrawal, and only afterwards, when it was all over did they say we consider Bonanno responsible. And, I say that this testimony indicates that it is—if the Union had implicitly consented to the withdrawal or certainly that they should be stopped from contending that Bonanno had no right to withdraw—

JUDGE FITZPATRICK: Are you arguing that termination of the lockout was a quid pro quo for the benefit of union members to return to work, was a quid pro quo for the separation of Bonanno from the group?

MR. COVEN: It was a direct result. I don't know whether you can call it a quid pro quo. It was a direct result. If Bonanno had not withdrawn from the Group, there was no reason

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for the Group to discontinue its lockout.

You will remember the stipulation shows, and the testimony is, that when the Union struck Bonanno the Employer's Group locked out their employees. When Bonanno withdrew and was no longer a part of the Group, the group terminated the lockout, called their employees back to work. That is shown in Mr. Walsh's letter of November 24th, Joint Exhibit No. 5. Whether it was a quid pro quo in so many words; I can't say at this point. But, certainly it was a direct result of

Bonanno's withdrawal and if the Union at that time or at any time subsequent had contended that Bonanno had improperly withdrawn, that Bonanno was going to be considered part of the Group, then certainly it would have given Bonanno a chance to rethink his position, or to consider—reconsider his position or to consider some change. He might have gone back to the Group, who knows. He might have given the Group an opportunity to rethink the question as to whether or not there was a lockout.

I say it was incumbent upon the Union if they felt Bonanno had improperly withdrawn to make it known at once. They didn't, up to and including April the 13th. And, the first time they made their position known, even before they had asked Bonanno to sign the contract or make any representation to him that he was bound by the contract, the first thing they did was file an unfair labor practice charge before they had even made any demand on him that he sign the contract.

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Or indicated to him or anybody else that they considered him bound by the contract.

I therefore at this time, Your Honor, move to dismiss the Complaint on basis that the overwhelming evidence shows number one, that Bonanno had a right to withdraw, that there was an impasse and Bonanno had a right to withdraw as a result of the impasse. And, that number two, in any event the testimony shows that the Union had implicitly or otherwise contended to or assented to withdraw and should be stopped in any event from contending that Bonanno is bound by the terms of the contract.

JUDGE FITZPATRICK: Thank you.

I don't see any great need for a lengthy time for briefs. The area of disputed facts are fairly limited thanks to the good of-

fices of counsel, much of the record is in the form of stipulated evidence. The big questions are questions of law and policy. I would appreciate your citing appropriate case law to me, it would be a big help.

I will set close of business September 20 as the time when briefs are due.

MR. COVEN: May I ask, Your Honor, I realize the issues are fairly limited; but it might be a little difficult for me in view of my schedule to get a brief in by September 20th. May I ask that we have 30 days from today, would that be asking too much?

[104]

JUDGE FITZPATRICK: Supposing I make it the close of business September 24th.

MR. COVEN: That is a little less than 30 days, today is August the 30th.

JUDGE FITZPATRICK: I will make it close of business September 27, okay?

MR. COVEN: Thank you, sir.

JUDGE FITZPATRICK: If there is nothing further, this hearing is closed.

(Whereupon, at 4:05 p.m., the hearing in the above entitled matter was closed.)

JOINT A

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FIRST REGION

In the Matter of CHARLES D. BONANNO LINEN SERVICE, INC.	
and	CASE NO. 1-CA-11,628
TEAMSTERS LOCAL UNION NO. 25, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA	

STIPULATION

The undersigned parties hereby stipulate as follows:

1. For some years prior to September 21, 1972 the following named companies, Charles D. Bonanno Linen Service, Inc., Bristol Coat & Apron Service Co., Loyal Crown Linen Service, Inc., Delaney Linen Service, Inc., Federal National Linen Service Co., Independent Leasing Corporation, Gilman Towel Supply So., [sic] Inc., Morgan Services, Inc., Norfolk County Linen Service and Stancard Linen Service, negotiated as an "Employers' Group" with Teamsters, Chauffeurs, Warehousemen and Helpers Union, Local No. 25, hereinafter referred to as the "Union," in an appropriate

unit consisting of the Employers' linen supply truck drivers, and helpers.

2. On September 21, 1972, the above-named companies signed individuals and identical agreements which by their terms were to remain in effect until April 18, 1975 and thereafter until amended by mutual agreement or terminated in accordance with their terms. The Bonanno contract, a copy of which is attached hereto as Joint Exhibit #1, and made a part of this stipulation, contained the provision that "either party desiring to amend or terminate the contract shall on or after February 15, 1975 notify the other party in writing of said intention."

3. On March 14, 1975, the Employers' Group and Union held their first meeting for the purpose of negotiating a new collective bargaining agreement. After meetings held on March 19 and 26, April 1, 3, 11, 13, 14, 16, 17 and 30, 1975, the parties on April 30 arrived at an agreement, subject to ratification by the Employers' Group drivers, which provided for the payment of the drivers on an hourly basis. On May 4, 1975, the drivers voted to reject the contract.

4. By letter dated April 18, 1975, a copy of which is attached hereto as Joint Exhibit #2 and made a part of this stipulation, the Union advised each Company in the Employers' Group, including Charles D. Bonanno Linen Service, Inc., hereinafter referred to as Bonanno, that it was giving the sixty (60) day notice of termination, pursuant to the terms of the 1972 Agreement referred to in Paragraph 2 above.

5. By letter dated April 23, 1975, a copy of which is attached hereto and made a part hereof as Joint Exhibit #3, the Companies composing the Employers' Group, through their counsel, offered to meet with the Union for the purpose of negotiating a new Agreement. Thereafter a Federal Mediator attended and participated in all subsequent bargaining meetings referred to herein.

6. On May 12, 1975, the parties met, at which time the Union proposed that the drivers be compensated on a commission basis rather than on an hourly rate. This proposal was rejected by the Employers' Group in accordance with the position it had previously taken at the negotiation meeting held on April 14, 1975, as well as at meetings held prior thereto.

7. The parties met again on May 15, 1975, at which time the Union insisted that drivers be paid on a commission basis. This method of wage payment was again rejected by the Employers' Group and the Union was advised that the Employers' Group would accept a strike rather than concede on this issue.

8. At the next meeting held on May 20, 1975, the Union continued to insist that no contract could be consummated unless the drivers were paid on a commission basis. The Employers' Group again rejected this demand.

9. A further bargaining meeting was held on June 18, 1975 in an attempt to break the impasse which had been reached on May 15, 1975 concerning the method of driver payment, among other outstanding issues.

10. On June 23, 1975, the Union called a selective strike against Bonanno. All of Bonanno's drivers participated in such strike. Following the commencement of the strike at Bonanno, the remaining companies in the Employers' Group locked out their drivers. The strike against Bonanno has continued to the present date.

11. Thereafter the parties, including Bonanno, met again on July 22, August 15, and September 2, 1975, but were still unable to resolve the continuing impasse on method of payment to drivers, among other issues.

12. By letter dated November 21, 1975, a copy of which is attached hereto as Joint Exhibit #4 and made a part hereof, Bonanno advised the Employers' Group that it was revoking

its prior authorization of the negotiating committee of the Employer's Group to bargain on its behalf and that; "The Company is withdrawing from the association with specific respect to negotiations at this time because of an ongoing impasse with Teamsters Local 25." Bonanno also advised the Employers' Group that it would engage in collective bargaining negotiations directly with the Union. On the same date a copy of said notice was mailed to the Union and orally read to Union Field Representative Salter over the phone.

13. At various dates between June 23, 1975 and November 21, 1975 Bonanno hired permanent replacements for all of its striking drivers.

14. By letter dated November 24, 1975, a copy of which is attached hereto and made a part hereof as Joint Exhibit #5, Counsel for the Employers' Group advised the Union that it was his understanding that the Union had been notified that Bonanno had withdrawn from the Employers' Group and stated that the remainder of the Group would continue to negotiate with the Union. The letter also advised the Union of the termination of the lockout by the remaining members of the Group.

15. On December 1, 1975, February 4, April 5 and April 13, 1976, the Union and the representatives of the remaining members of the Employers' Group, pursuant to the November 24, 1975 letter (Joint Exhibit #5) met without Bonanno. On April 13, 1976 the Union dropped its "commission payment" demand and accepted the Employers' Group revised hourly wage offer, and agreement was reached on a new contract, a copy of which is attached hereto as Joint Exhibit #6, and made a part of this stipulation.

16. By letter dated April 29, 1976, the Union informed Bonanno that it had at no time consented to Bonanno's withdrawal from "an association of laundry employers known as the Massachusetts Linen Supply Association" and

that it considered Bonanno to be a member of the Association and bound by the terms of the settlement reached with the Association. A copy of said letter is attached hereto as Joint Exhibit #7 and made a part hereof.

17. By letter dated May 3, 1976, a copy of which is attached hereto as Joint Exhibit #8 and made a part of this stipulation, Counsel for Bonanno advised the Union that Bonanno was not bound by the collective bargaining agreement referred to in the Union's letter dated April 29, 1976 (Joint Exhibit #7). A copy of said letter is attached hereto as Joint Exhibit #8 and made a part hereof.

It is further agreed that the above stipulation of fact shall be introduced in lieu of formal testimony at the hearing to be held in this matter before an Administrative Law Judge, and shall be received as evidence by the Administrative Law Judge with the understanding that the parties hereto will not be precluded from offering additional relevant testimony in the hearing.

CHARLES D. BONANNO LINEN SERVICE, INC.

By /s/ Sidney A. Coven	Attorney	8/27/76
(Representative)	(Title)	(Date)

TEAMSTERS LOCAL UNION NO. 25, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

By /s/ Alan J. McDonald	Atty	8/27/76
(Representative)	(Title)	(Date)

COUNSEL FOR THE GENERAL COUNSEL

/s/ Francis X. McDonough — 8/27/76

Francis X. McDonough — (Date)
National Labor Relations Board
First Region
Boston, Massachusetts

JOINT I

LINEN SUPPLY DRIVERS CONTRACT

Boston Area

April 18, 1972 to April 18, 1975

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AGREEMENT

AGREEMENT effective this 21st day of September 1972, as of the eighteenth day of April, 1972, by and between Teamsters, Chauffeurs, Warehousemen and Helpers Union Local No. 25, Boston, Massachusetts, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, party of the First Part, hereinafter called the "UNION", as collective bargaining representatives of the linen supply drivers and helpers of the Employer at its location stated below, and Bonanno Linen Service Inc., 167 Mystic Ave., Medford, Mass. 02155, party of the Second Part, hereinafter called the "EMPLOYER", conducting a linen supply business at

ARTICLE I

All present employees who are members of the Local Union on the effective date of this contract shall remain members of the Local Union in good standing as a condition of employment. All present employees who are not members of the Local Union and all employees who are hired hereafter shall

become and remain members in good standing of the Local Union as a condition of employment on and after the 31st day following the beginning of their employment or on and after the 31st day following the effective date of this contract, whichever is later. When the Employer needs additional employees, he shall give the Local Union equal opportunity with all other sources to provide suitable applicants, but the Employer shall not be required to hire those referred by the Local Union. This Article is subject to the applicable provisions of the Labor-Management Relations Law of 1947.

ARTICLE II

1. Except as hereinafter stated, the Employer will make available not less than forty (40) hours of work, Monday through Friday, inclusive, in a work week. To the extent of number of hours added to the ordinarily scheduled work week before or after a work week in which an unworked holiday occurs the hours of the holiday week may be reduced below forty (40). The forty (40) hours above referred to may be scheduled in part on the Saturday preceding or following an unworked holiday. The Employer may schedule in any week trucks to be driven on Saturday to make special or emergency deliveries. Hours paid for, though not worked on the holidays listed in Article III, are not to be considered hours of work within the meaning of this Article.

2. One and one-half (1-1/2) times the regular hourly rate will be paid for time worked after forty (40) hours in a work week and for hours worked on Saturday provided the employee has worked all the hours for which he was scheduled in the same work week. Scheduled hours lost because of sickness evidenced by a doctor's certificate, or because of absence for which the employee is entitled to pay under Article XIII, second

paragraph (Mourning Pay), or because the Employer does not operate his route because of storm, breakdown or

(f) The bidding for this second vacant route shall conclude the bidding and the route thus made vacant shall be assigned at the discretion of the Employer.

(g) No driver salesman shall be allowed to bid for any vacancy if he has not served at least one full year on his assigned route, or at least two full years on a bid route.

(h) This bidding rule shall not apply to temporary summer routes at the seashore nor shall it apply to temporary routes established for less than 120 days, which may be established for sales solicitation purposes.

Section 6. In the event of acquisition or merger, the seniority of employees in the acquiring company shall prevail.

ARTICLE XXVI

The provisions of this Agreement are subject to the Economic Stabilization Act as amended, and to the Executive Orders and Regulations relating to Wage and Price Stabilization. Accordingly payment and continued payment of amounts herein provided are subject to said law, orders and regulations. The Employer and Union will apply for approval if required.

If any provision of this Agreement may not be put into effect because of the Wage and Price Regulations, then such proposals, or any part thereof, including any retroactive requirement thereof, shall become effective at such time, in such amounts, and for such periods, retroactively and prospectively, as will be permitted by law at any time during the life of this Agreement and any extension thereof.

ARTICLE XXVII

Section 1. This Agreement shall be binding on the respective parties and all members of the Union.

Section 2. This Agreement shall become effective September 21, 1972, as of April 18, 1972 with respect to increases under Articles IV, V, VIII and IX, and shall continue in full force and effect until the 18th day of April, 1975 and thereafter until amended by mutual agreement or terminated hereunder. Either party desiring to amend or terminate this Agreement shall, on or after February 15, 1975, notify the other party in writing of said intention. In the event the notice is one of termination, the termination shall become effective not earlier than sixty (60) days following the giving of notice thereof.

Bonanno Linen Service Inc.
(NAME OF COMPANY)

By Charles D. Bonanno Treas.

Teamsters, Chauffeurs, Warehousemen and Helpers Union Local No. 25, Boston, Massachusetts, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America

By Herbert T. Salter, Field Rep.

JOINT 2

TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN
AND HELPERS UNION

LOCAL NO. 25, I. B. OF T., C., W. AND H. OF A.
Affiliated with the Boston Joint Council of Teamsters and Chauffeurs, No. 10

WILLIAM J. McCARTHY
President and Business Agent
JOSEPH C. CONLON
Secretary-Treasurer

OFFICE:
544 MAIN STREET
BOSTON, MASSACHUSETTS 02129

TELEPHONE 241-8825

April 18, 1975

Re: Termination of
Union Contract
Linen Group

Gentlemen:

Under the terms of Article XXVII, Section 2 of the present working agreement, I hereby give the sixty (60) day notice of termination of said agreement.

Very truly yours,

Herbert T. Salter
Field Representative

HTS/eb

cc. Mr. Gordon L. Rayner
Mr. Richard J. Walsh, Atty.

JOINT 3

TELEPHONE: (617) 523-6250
TELEPHONE: (617) 523-4957
CABLE: WARSTACK
TELEX: 940139

WARNER & STACKPOLE
28 STATE STREET, 20TH FLOOR
BOSTON, MASSACHUSETTS 02109

April 23, 1975

CERTIFIED MAIL –
RETURN RECEIPT REQUESTED

Teamsters, Chauffeurs, Warehousemen
and Helpers Union
Local No. 25, I.B. of T., C., W. and H. of A.
544 Main Street
Boston, Massachusetts 02129

ATTENTION: Mr. Herbert T. Salter, Field Representative
Re: Termination of Linen Supply Drivers
Collective Bargaining Agreement

Gentlemen:

This Notice is given to you on behalf of the following Companies in reservation of the Companies' legal rights to take action upon termination of the contract. You are therefore notified in accordance with Section 8(d) of the National Labor Relations Act as amended that the Companies offer to meet and confer with you for the purpose of negotiating a new contract. Your reply may be sent to me.

C.D. Bonanno Linen Service, Inc.
Bristol Coat & Apron Service Co.
Loyal Crown Linen Service, Inc.

Delaney Linen Service, Inc.
Federal National Linen Service Co.
Independent Leasing Corporation
Gilman Towel Supply Co., Inc.
Morgan Services, Inc. (Boston & Woburn)
Norfolk County Linen Service
Standard Linen Service — Boston
Standard Linen Service — Fall River

Sincerely yours,

Richard J. Walsh

RJW/emr

cc: Federal Mediation & Conciliation Service,
William S. MacDermott, Commissioner
Mass. Board of Conciliation & Arbitration
Mr. Gordon L. Rayner

#739568

JOINT 4

BONANNO RENTAL SYSTEMS

November 21, 1975

TO: LINEN SUPPLY NEGOTIATING COMMITTEE
(consisting of Messrs. Peter Band, Gordon Rayner, Arthur Spilios, Lou Katz, and Charles D. Bonanno).

This is to notify you that Charles D. Bonanno Linen Service, Inc., (the "Company") hereby revokes, its authorization dated February 19, 1975, wherein the company authorized the above referenced committee to act on its behalf in negotiating a new Linen Supply Drivers' Contract with Local Teamsters Union No. 25 I.B.T. to replace the contract which expired pursuant to a sixty (60) day notice of termination from Local 25 dated April 18, 1975, effective 12:01 A.M., June 18, 1975.

The Company is withdrawing from the association with specific respect to negotiations at this time because of an ongoing impasse with Teamsters Local 25. The Company agrees to pay its proportionate share of expenses incurred through the date hereof.

The Company will engage in collective bargaining negotiations directly with Local 25.

Charles D. Bonanno

Charles D. Bonanno
Charles D. Bonanno Linen Service

c.c.: Mr. Herbert Salter, Field Representative for Local 25, 544 Main St., Charlestown, Mass. 02129

Serving New England Since 1898
Bonanno Rental Systems, 162 Mystic Avenue
Medford, Massachusetts 02155 Telephone: 617-395-7800

JOINT 5

TELEPHONE: (617) 523-6250
TELEPHONE: (617) 523-4957
CABLE: WARSTACK
TELEX: 940139

WARNER & STACKPOLE
28 STATE STREET, 20TH FLOOR
BOSTON, MASSACHUSETTS 02109

November 24, 1975

Teamsters, Chauffeurs, Warehousemen
and Helpers Union
Local No. 25, I.B. of T., C., W. and H. of A.
544 Main Street
Charlestown, Massachusetts 02129

ATTENTION: William J. McCarthy, President and Herbert T. Salter, Field Rperesentative

Re: Linen Supply Companies Negotiation

Gentlemen:

It is our understanding that you have been notified that the C.D. Bonanno Linen Service, Inc. has withdrawn from the negotiating group of Linen Supply Companies. This is to inform you that the remainder of the group will continue to negotiate together through a Committee which will be the same as before except that Mr. Charles D. Bonanno has been replaced by Mr. Alan Shapiro. As before, the Committee will be represented by Messrs. Gordon L. Rayner, Richard J. Walsh and Thomas M. Reardon.

Certain of the drivers at the Fall River Plant of Standard Linen Service sought to return to work today and were allowed to commence work. Each of the other Companies have attempted to reach their drivers by telephone this afternoon

requesting them to report to work at the usual time tomorrow morning. Their pay and conditions of employment will be the same as when the walkout began, except for contributions to the Health and Welfare Pension Funds. The Companies are willing to make contributions to these Funds as soon as they may legally do so under the terms of the Labor Management Relations Act of 1947, Section 302(c)(5)(B). This law forbid such contributions except where provided in a written agreement, and the standard form of agreement with the Trustees of each of the Funds also require a collective bargaining agreement as the basis of contribution. Since there is at present no written agreement in force, the Companies are legally prevented from making a contribution.

On behalf of the Companies we offer to meet and confer with you to attempt to reach an agreement on the terms of a new contract.

Sincerely,

Richard J. Walsh
On behalf of the Companies'
Negotiating Committee

RJW/emr

cc: Mr. Daniel J. FitzGibbons,
Bristol Coat & Apron Service Co.
Mr. Alan J. Shapiro
Delaney Linen Service, Inc.
Mr. James H. Connors
Federal National Linen Service Co.
Mr. Allan B. Gilman
Gilman Towel Supply Co., Inc.
Mr. Arthur Spilios
Loyal Crown Linen Service, Inc.

Mr. Peter Band
Morgan Services, Inc.
Mr. Kevin Reardon
Norfolk County Linen Service, Inc.
Mr. Lou Katz
Standard Linen Service, (Div. of Stanlinco, Ltd.)

Mr. Gordon L. Rayner, New England Linen Supply Association
Commissioner William S. MacDermott, FMCS

JOINT 6

LINEN SUPPLY

AGREEMENT

BETWEEN

LOCAL UNION No. 25

Affiliated with
International Brotherhood of
Teamsters, Chauffeurs,
Warehousemen and Helpers
of America

AND

_____

_____

[SEAL]

April 18, 1975 to April 24, 1979

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AGREEMENT

AGREEMENT entered into this 23rd day of April, 1976, by and between Teamsters, Chauffeurs, Warehousemen and Helpers Union Local No. 25, Boston, Massachusetts, af-

filiated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, party of the First Part, hereinafter called the "UNION", as exclusive collective bargaining representatives of the linen supply drivers and helpers of the Employer at its location stated below, and

party of the Second Part, hereinafter called the "EMPLOYER", conducting a linen supply business at

ARTICLE I.

Union Recognition and Union Security; Checkoff

Section 1. *Union Recognition and Union Security.* (a) All present employees who are members of the Union on the effective date of this Agreement shall remain members of the Union in good standing as a condition of employment. All present employees who are not members of the Union and all employees who are hired hereafter shall become and remain members in good standing of the Union as a condition of employment on and after the 31st day following the beginning of their employment or on and after the 31st day following the effective date of this Agreement whichever is later. When the Employer needs additional employees, he shall give the Union equal opportunity with all other sources to provide suitable applicants, but the Employer shall not be required to hire those referred by the Union. This Article is subject to the applicable provisions of the Labor-Management Relations Law of 1947, as amended.

(b) The Employer shall discharge an employee within seven (7) days after receipt of a written notice from the Union that said

ARTICLE XXVII

Term of Contract

(a) This Agreement shall be binding on the respective parties and all members of the Union.

(b) This Agreement shall take effect on April 23, 1976, (effective as of April 18, 1975, April 1, 1976 and April 26, 1976, as appropriate, with respect to certain contributions under Articles VIII and IX and effective as of April 18, 1975 and April 15, 1976, as appropriate, with respect to certain increases under Articles V and VI) and shall continue in full force and effect until the 24th day of April, 1979 and thereafter unless at any time on or after February 23, 1979 either party notifies the other in writing of its desire to amend, modify or terminate this Agreement in which event this Agreement shall expire on the sixtieth day following the giving of said notice.

In the event that neither party provides the other with written notification of its desire to amend, modify or terminate this Agreement on or before April 23, 1979, then at any time thereafter either party may notify the other in writing of its desire to amend, modify or terminate this Agreement in which event this Agreement shall expire on the sixtieth day following the giving of said notice.

FOR THE COMPANY

_____

(Name of Company)

By: _____

FOR THE UNION:

TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS UNION LOCAL No. 25, BOSTON, MASSACHUSETTS, affiliated with the INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA.

By: William J. McCarthy
President

By: Herbert T. Salter
Field Representative

JOINT #7

TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN
AND HELPERS UNION

LOCAL NO. 25, I. B. OF T., C., W. AND H. OF A.
Affiliated with the Boston Joint Council of Teamsters and Chauffeurs, No. 10

WILLIAM J. MCCARTHY
President and Business Agent
JOSEPH C. CONLON
Secretary-Treasurer

OFFICE:
544 MAIN STREET
BOSTON, MASSACHUSETTS 02129

TELEPHONE 241-8825

April 29, 1976

Charles D. Bonanno Linen Service Inc.
162 Mystic Avenue
Medford, MA 02155

Attention: Mr. Charles D. Bonanno

Dear Sir:

This is to advise you that Local Union No. 25 has at no time consented to your withdrawal from an association of laundry employers known as the Massachusetts Linen Supply Association. Moreover, Local Union No. 25 considers you to be a member of that Association and to be bound in full to all terms of settlement reached with the Association during the recently completed collective bargaining negotiations.

Very truly yours,

William J. McCarthy
President

HTS/eb

JOINT #8

LEPIE AND COVEN
ATTORNEYS AT LAW
TEN TREMONT STREET
BOSTON, MASSACHUSETTS 02108

JOSEPH E. LEPIE
SIDNEY A. COVEN
WARREN D. ATLAS

SPECIALIZING IN
LABOR MANAGEMENT RELATIONS
AND ADMINISTRATIVE LAW

AREA CODE 617
828-8240

May 3, 1976

Mr. William J. McCarthy, President
Local 25, Teamsters, Chauffeurs,
Warehousemen and Helpers Union
544 Main Street
Boston, Massachusetts 02129

Re: Charles D. Bonanno Linen Service, Inc.

Dear Sir:

Your letter of April 29, 1976 addressed to the above Company has been referred to this office.

This is to advise you that in our opinion the Company is not bound by the collective bargaining agreement which your Union recently entered into with the association of laundry employers whom you referred to as the Massachusetts Linen Supply Association.

Very truly yours,

Joseph E. Lepie

JEL/sam

cc: Mr. Charles D. Bonanno
Charles D. Bonanno Linen Service, Inc.
162 Mystic Avenue
Medford, MA 02155

Supreme Court of the United States

No. 80-931

Charles D. Bonanno Linen Service, Inc.,
Petitioner,

v.

National Labor Relations Board, et al.

ORDER ALLOWING CERTIORARI. Filed March 9, 1981

The petition herein for a writ of certiorari to the United States Court of Appeals for the First ----------Circuit is granted.